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THE LAW OF NATIONS,

INVESTIGATED

IN A POPULAR MANNER.

ADDRESSED

TO THE

FARMERS OF THE UNITED STATES.

BY WILLIAM JOHN DUANE,

ONE OF THE REPRESENTATIVES OF THE CITY OF PHILADELPHIA, IN THE LEGISLATURE OF PENNSYLVANIA.

But yet they that have no science, are in better and nobler condition, with their natural prudence; than men, that by *mis-reasoning*, or by trusting them that reason wrong, fall upon false and general rules. HOBBES, *Leviath. c. 5.*

PHILADELPHIA:

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PREFACE.

THE necessity of investigation into the rights and laws of nations, at the present time, is universally felt. If nations are to maintain intercourse with each other, there should be known, fixed, and invariable rules or laws, by which that intercourse may be regulated. The same uncertainty which is felt so oppressively in the uncertainty of the *common law*, and the opportunity afforded to men invested with power to abuse that power, and through its uncertainiy, make it the most galling tyranny, would alone be sufficient to convey an idea of the injuries and injustice to which mankind are exposed, from the want of known and universally received principles, or *laws for the government of nations in their intercourse with each other*. If the maxims of Christianity were practised by its preachers or professors, the moral law would supercede the necessity of a law of nations; but unfortunately the greatest violators of national and social order, are those who employ the name, of "religion and order," as a mask to cover outrages upon all mankind.

The essays, which form this pamphlet, were not contemplated to assume this form. The discussions which arose out of the injuries experienced by the United States, from the jealous envy and the selfish monopoly of Great Britain during the last year, excited naturally a great desire among the thinking people of the United States, to see some discussion of those social maxims which have been heretofore accepted by all moral people as laws sacred and inviolable. Those maxims having been overthrown, and the indignation of a free people being necessarily excited by seeing the nation, as it were, outlawed from its pacific intercourse with the civilized world, these essays were undertaken as well to satisfy curiosity, as to prepare the public mind for events, which it was not difficult to foresee must arise out of the annihilation of all the social and moral obligations which have previously formed the ties between civilized nations.

The discussion was taken up, in the form of a reply to the following Questions.

1. What are the laws of nations, and when, where, and how were they formed?
2. What are the maritime rights of belligerents, and the consequent duties of neutrals?
3. What was the conduct of England, and of France, towards neutrals, prior to our revolution?
4. What was the conduct of France and England towards neutrals, during our revolution?
5. What has been the conduct of France and England towards the United States, since our revolution?
6. What has been the conduct of the United States towards France and England, since the revolution?

A number of the most respectable citizens, desired that the essays should be put into the present form; they appeared originally under the assumed signature of PAULDING; this preface is written, and the publication made, without any participation of the author, whose name is affixed to it without his knowlege, and without any expectation of pecuniary profit from the publication.

THE LAW OF NATIONS

INVESTIGATED.

TO THE FARMERS OF THE U. STATES.

LETTER I.

A NUMBER of questions, have been publicly offered, to be answered by a correspondent of the Aurora. To do justice to the subjects embraced by those questions, it would be necessary to possess the ability, industry, and the volume of an historian; they comprise not merely a history of our own country, but an important part of that of Europe, for several centuries. As a simple correspondent for a daily newspaper, I can barely offer some general remarks upon each question, and in as plain a manner as possible. Perhaps my attempt may induce those, who are more competent, to give full and satisfactory answers.

The first question to be discussed, is:

What are the laws of nations, and when, where, and how were they formed?

In a free country, like ours, it is not surprising that a farmer should conclude from the term *laws*, that some competent authority had compiled and enacted the laws of nations, as they are styled: here, where the voice of the people, by their representatives, creates and gives force to all law, and where nothing is law without that authority, from education and habit we conclude that there can and ought to be no law, unless competently enacted. The history of the world proves, however, that in our ideas as in our condition we are peculiar and alone; in every country but our own, the law originates in the will of one or a few, and that will is too often the result of arbitrary or ambitious views without regard to the happiness or interest of the governed.

To those, therefore, who are not conversant with European forms, the term *laws* of *nations* naturally conveys the idea, that at some fixed time and place, there had been an assembly of representatives, from the civilized states organized at the time, who, instructed and anxious to dispel the yet lowering clouds of feudality and barbarism, had discussed and settled, upon the principles of the laws of nature and universal good and justice....what it should be lawful or unlawful for one or more nations to do....or not to do....in their intercourse with the rest.

No doubt, my friends, many of you have believed that this was the case, and that the laws of nations had such an origin.

The conclusion, that this was the case, must have resulted from the exercise of your sober reason and reflection. You must have thought, that if no such system had been formed, amongst ancient nations, between whom there was little or no intercourse, and nine-tenths of whom were uncivilized; that, if no such system had followed the dismemberment of the Roman empire, when vandalism and fanaticism struggled for the mastery, over the minds and bodies of men; you must have supposed, that, if in those times, such a system had not been created, it must undoubtedly have followed the dispersion of Gothic darkness, when the age of chivalry had vanished before the influence of civilization, commerce, and dawning science. You must have thought, that as soon as men became sensible of the value of society, states also, sensible of being actuated by human passions, felt the necessity of sheltering themselves under the canopy of laws, to obtain protection and punish injury, to secure happiness and avert danger; laws common to all, and against which none could rebel, without incurring punishment from the rest.

If any of you have had this picture before your imaginations, how deplorably have you been deceived; you cannot yet have opened the bloody pages of European history. No, my friends, although there existed, if possible, a greater necessity, for the obedience of states, than that of men, to the laws of nature and justice, no code has been formed, no code exists, of which the authority is not disputed and uncertain.

It is true, that there are among nations, as there are among men, immutable, just, and imperishable laws, by which states ought to be governed, and to which their conduct can always be determined by the exercise of our reason; these laws are the laws of nature itself; but these are not what are termed the laws of nations, they are even in some important points, at variance with the latter.

The laws particularly in view at this time, are those called the maritime laws of nations. The origin of those laws is as uncertain as that of the common law of England; like it they bear the marks of feudality and ignorance, and in their interpretation are susceptible of equal variation and distortion. Like the common law, too, they are scattered through the pages of innumerable volumes, from the pens of monks, lawyers, judges, statesmen, and princes. Many of them owe their existence and authority, even to the mandates of petty pirates, or to the corruption and avarice of robbers more eminent.

Those who profess to venerate this maritime system, tell us that it can boast of the Rhodians, Romans, Carthagenians, of ancient times, the Pisans, Barcelonese, Arragonese, Genoese, Venetians, &c. of modern times, among the number of its founders. That is, the regulations, ordinances, and decisions of these different people, adopted by each for its own government in maritime affairs, are represented as demanding the

reverence and obedience of states subsequently existing. You must remark, respecting these statutes, that many of them were in force, when what is properly called commercial trade, scarcely had an existence, and when men, much less states, had but little regard for the immutable laws of nature and justice; and that as the instances of their variation, or disagreement from each other, were in proportion to the number of those enacting them, there was no common consent as to their justice or force.

This is the foundation of what I may term the artificial maritime law of nations. A superstructure has been raised upon it, consisting of the opinions of writers of different countries, upon questions arising out of national wars and disputes on the ocean. The first work, comprising the statutes above mentioned, and commentaries by the writer, was called *Il Consolato del Mare*, (meaning maritime jurisprudence or law) and published about 800 years ago at Pisa, at that time the reputed mistress of the ocean. Commentaries upon this work, and discussions of maritime questions, subsequently arising, have been added to the stock of artificial law, by writers of every nation of Europe, that had at any time a share in its commerce.

It follows then, that there never has existed, that there does not now exist, any system or written law, which from its origin, construction, or authority, can or ought to control the conduct of independent states; and that the works which I have mentioned, are of no further consequence than precedents, disagreeing according to their origin, and groundless unless established upon the only just basis, the law of nature.

It matters not where any decision was made, who was the reporter or commentator, unless the law of nature sanctions the artificial law of men or states, the latter is of no force nor effect.

I ought to have mentioned in a more fit place, but presume it will answer as good a purpose here, that, besides the ordinances I have stated, and the commentaries of various writers, certain stipulations in treaties, or the tacit tolerance of particular acts, have also been pressed into the service of those, who quote the laws of nations, and have been pronounced a part of that law. But no greater reliance can be placed on these, than upon the ordinances and commentaries; they vary with every war, and clash almost universally with each other.

Notwithstanding this total want of a covenanted or authorized law, it is certain....

That there are natural laws of nations, founded in justice and in right, the nature and obligations of which reason teaches us to ascertain and observe; that these laws being immutable and common to all, they ought to command universal reverence and respect, and that whatever nation violates one or all of them, commits a trespass upon the rights of all nations and of all men, for which it is to be regretted no responsibility has as yet ever been exacted.

What are usually termed the laws of nations, I consider to be artificial laws, the work of men; and although pretended to be founded upon the laws of nature, they are so various and repugnant as well to each other as often to the laws of nature themselves, that as a system they have no force nor authority of their own. If there are any, that owe their merit to their justice and consonance with right and reason, they deserve all our regard, but until thus tested we ought never to adopt them; for, I repeat, the artificial law of nations, from the nature of its origin and formation, is necessarily calculated to produce, and ought to excite doubts in the minds of freemen, of its purity and excellence.

Such, farmers of America, are my opinions: weigh, and value them, according to your sense of their soundness or uncertainty, for it is of much consequence, to the discussion of the remaining questions, that you should well understand that upon which I have now given my sentiments.

February 7, 1809.

LETTER II.

IN the preceding letter I have simply endeavored to explain my sentiments respecting what are termed the *laws of nations*. My conclusions were:....1. That the nature and origin of those artificial laws of nations, were not such as to entitle them, as a system, to the faith or observance of free states:.... 2. That no law, regulation, or custom, however ancient, however created, or by whatever nations adopted, ought to be obligatory, unless founded upon the immutable basis of universal good and moral justice.

To be able to determine, with some precision, the next question that is, "*what are the maritime rights of belligerents, and the consequent duties of neutrals?*" it may be useful to divide into particular terms or epochs, the time that has passed from the first known subserviency of navigation to the purposes of trade, and note the practices of nations in each term.

The Arabians, inhabiting the borders of the Red Sea, are represented by various authors, particularly by Robertson, in his history of America, as the first navigators, in barks roughly constructed and propelled by oars along the coast, of which they took care never to lose sight. This people, however, scarcely deserve the character of a commercial state; the Phœnicians,

or people of Tyre, were probably the first entitled to that distinction. I will therefore state the

First term of about 1700 years, from the building of Tyre, to the destruction of Rome, in the fifth century of the Christian era.

Second term of about 800 years, from the destruction of Rome, to the 13th century, when the mariner's compass was invented.

Third term of about 500 years, from the period of the invention of the mariner's compass, to the present time.

Within the first term, *force* alone constituted *right*, and there were nearly as many sovereigns of the seas then navigated, as there were existing states. With but one exception, all the maritime cities or states, which flourished within that term, exercised *warlike dominion*, in proportion to their strength or means; commerce was in most instances but a secondary consideration, conquest was the first. The Phœnicians, Egyptians, the cities of Greece, and the Carthagenians, each in their turn, claimed the supremacy of the ocean, and evinced their power by acts, meriting the stigma of piracy; and lastly the Romans, upon the overthrow of Carthage, exacted tribute for the use of the seas. The republic of the Rhodians forms a noble exception; they maintained themselves by a rigid adherence to the sound principles of moral justice as well as of trade; their commerce flourished, but it was the effect of an honest policy, not of a lust for maritime or inordinate dominion; and whilst the piratical states uniformly became victims of such lawless sway as they had themselves exercised, the Rhodians long maintained their independence and their merited opulence.

From the general character of the ancient maritime states, therefore, you may conclude that within the first period we can obtain little or no information, calculated to explain the nature and extent of maritime rights, according to just principles.

In the early part of the second term, the seas, as well as the continent of Europe, became the theatres of Saracenic or barbarian plunder: all trade and intercourse were for a long time interrupted or crushed by the numerous squadrons of the marauders. At length, arose a number of sovereigns of the seas, Venice, Genoa, and Pisa, who contended with each other in bloody wars for maritime dominion: each asserted, and maintained by means scarcely less barbarous than those of the Saracens, a right to exclusive jurisdiction and trade. Of these states, Venice appears to have been the most audacious; its tyranny was so grievous, that the principal contemporary states, anxious for freedom of trade, found it necessary to form confederacies to obtain it: their hostility, however, was averted by that policy, to which England has since been so much indebted for her power: Venice maintained a regular system of corruption and espionage; her factors were found in every port, connected with the state of Venice by the immunities which they received, and

the wealth which they every where displayed; these factors were political as well as commercial agents; they fomented jealousies amongst neighbors in order to weaken their power and divert attention from herself; they gained the devotion of influential men in the governments near which they resided, by presents adapted to the taste or avarice of those whom they meant to seduce to their views;....the wealth therefore, that flowed from an usurped monopoly of trade, enabled her to divide and bid defiance to those states, which by their union might have annihilated her odious tyranny.

I at length, arrive at that period in the history of the world, when new and great events called for and promoted the civilization of mankind. The introduction of the mariner's compass; the discovery of a new route to India, and of America; the invention of the art of printing; and the employment of gunpowder; promised effects proportioned to the greatness of the era. Europe had scarcely recovered from the delirium of chivalry and the crusades, and from wars in support of the cross, characterised by every species of rapine and barbarity; when new and more vast objects for ambition, avarice, and fanaticism presented themselves.

In the discovery of new and immeasurable seas and continents, might have been anticipated, the extinction of wars for maritime dominion; that almost boundless cupidity would now be satiated, and force give way to the dictates of justice and sound policy. The reverse, however, has, in every view, been deplorably experienced: the colonial system arose upon a spirit of monopoly in proportion to the magnitude of the objects presented; the greediness for ships, commerce, and colonies encreased; contests for supremacy in the petty seas known to the ancients, and those between the Italian states for the monopoly of the Levant trade, were abandoned for the more daring purpose of usurping the sovereignty of the Atlantic, the Pacific, and Indian oceans. Avarice here too assumed the cloak of religion, to cover the foulest murders and robberies, the enslavement and plunder of millions of innocent Indians, in the East and West; while fanaticism rewarded the infuriate zeal of its emissaries, by confirming by Papal Bulls, the sovereignty of territories wrested from the rightful owners by the perpetration of every crime. Instead of regarding as free the oceans now opened, and adequate to the most enthusiastic anticipations of commercial greatness, the Europeans considered the sovereignty of the seas as having acquired new charms, and as calling for the greatest sacrifices for its maintenance.

Portugal and Spain, contemporary rivals in foreign discoveries and plunders, were the first to assert a claim to the monopoly of commerce and colonies. Not contented with boundless and inexhaustible regions, never naturally interfering with the prosperity of each other, these states engaged in wars, ostensibly

for the possession of the Canaries, but really from maritime jealousy. Portugal at first maintained the claim to dominion with most success, but was ultimately added to the already excessive power of her rival, by being reduced to the Spanish yoke under Philip II.

Spain, having already attained more colonial power than it possessed genius to manage, and being involved in wars with Holland and England, neglected the colonies acquired from the Portuguese. The Dutch, who had just asserted their independence of Spain, immediately took advantage of the state of the Spanish colonies, and possessed themselves of the greater part of them, and of nearly all the consequent trade. To weaken Spain by detaching from its authority, the Netherlands and these colonies, queen Elizabeth assisted the Dutch; not from any affection for them, but as a part of a system introduced for the first time with success in Elizabeth's reign....beside jealousy of the power of Spain, she desired to divide this monopoly the better to possess it. England was at this time the most powerful maritime state, owing to the weakness of the continent, occasioned by the wars which Elizabeth fomented; to the invariable misfortunes of the Spaniards in their attempts to invade England; and to the successful piracies committed by English cruisers in all parts of the world, and upon the commerce of all states.

The Dutch, however, had no sooner established their independence, than they applied themselves with so much success to foreign trade, as they had already done with regard to the European carrying trade, that they placed themselves in the first rank of maritime powers. The death of Elizabeth, placed the trident in their hands; they retained it above a century, by their bravery and industry; and lost it less by their valor, than by the incessant corruption and intrigues of England.

France, continually engaged in continental wars, was prevented from extending her views to ships, colonies, and commerce, with that success which must necessarily have followed a concentration, and direction to those objects, of her genius, courage, and commercial situation. Her maritime power, often more brilliant and triumphant, than that of England or Holland, and sometimes superior to that of both united, was employed rather in checking the ambition of those two powers, and in asserting the freedom of the seas, than in efforts to establish a supremacy for itself.

The bloody and desolating, wars, therefore, that have been waged for above four centuries, with very little intermission, have terminated in the temporary gratification of the constant object and desire of England, by placing in her hands the trident, and with it the monopoly of commerce. So steady and determined has been the policy of England, under all reigns, and ministers, so successfully has one object been pursued without regard to the means, that the military flag of England, which was the latest

to float in civilized Europe, is now almost the only one to be seen on the ocean.

In my next number, I shall inquire, what were the practices of European states, during the last term, or from the 14th century, in answer to the second question.

February 9, 1809.

LETTER III.

"What are the maritime rights of belligerents, and the consequent duties of neutrals?"

IF the position, stated in my first letter, be correct, as I think it is, that no laws nor customs ought to be respected, unless founded upon the immutable basis of universal justice, is there not something repugnant to the judgment, in the above question? Consulting common sense, is it consistent with the principles of universal good and justice, that belligerents should have rights or privileges, injurious to neutral states; rights arising out of no faults of the peaceful, but from the folly or madness of belligerents themselves?

States, peaceful and contented, however well organized or situated, necessarily suffer by the suspension of the general peace; yet another and a greater evil awaits them....they are required and compelled to abridge their sovereignty! Is this just, is this submission honorable? Surely, if particular states determine to wage war against each other, they ought to bear all the consequent evils; neutrals, who have no agency in creating or carrying on the war, ought not to be dragged into the vortex of ruin and desolation. Neutrality is not a new condition, it is a natural situation, and if any advantages arise out of it, it is the effect of the measures of the belligerents themselves, who violate all moral laws and justice by making inhuman war; if it produces an encrease of trade and wealth to the pacific, if it even possesses itself of the trade that belligerents can no longer carry on, those who lose can only censure their own folly or ambition, and instead of envying the neutral, should rejoice that the neutral affords them a portion of that trade and intercourse, which as belligerents they abandon or cannot carry on.

But, according to the artificial laws of nations, a state no sooner chooses to engage in war, than it arrogates a new organization, new powers, and new rights. Not content with the freedom, that war gives, of ravaging, pillaging, and destroying the property and persons of its enemies, a belligerent

assumes the right to violate all moral obligations, and *to regulate and determine what shall be the rights and duties of all the states that prefer peace and neutrality.* This creation of arbitrary and jealous power has no foundation in reason or justice....it is at variance both with the sovereignty of every free state and the natural law of nations; it is barbarism restored. Yet, my friends, this is the rule, that the nations of modern Europe have at various times servilely adopted; this is a material part of that system, which at this day subjects all commercial states to evils that ought only to be felt by those engaged in wanton and wicked wars.

When civilization succeeded barbarism, as mentioned in the preceding letter, there arose a necessity for some rules of conduct in maritime affairs: the only treatise, however, that was published before the discovery of America, was that of the Pisans, called *Il Consolato del Mare;* its author was unknown, but its principles were, by the Italian states, respected, because they did not militate a great deal against the claims of the powerful; the Pisans, at the time, being masters of the sea, gave this book implicit authority.

But, it was not until the discovery of America, that Europeans thoroughly felt the want of a competent system to restrain the strong and protect the weak....some general laws, that should produce the effects among states, which municipal laws were found capable of securing among men. In the wars, carried on for maritime dominion, by Portugal, Spain, Holland, France, and England, the commerce of the weak neutral states, the Hanse-towns, Sweden, Denmark, and afterwards Russia, was subjected to the most grievous restraints or to wanton pillage; nay, to such an extent was lawless power extended, that the neutrality even of the powerful states, was but the prelude to exactions and insults from the belligerents. In almost every state, therefore, reforms in belligerent practices were called for, and tracts were published to define belligerent and neutral rights. The laws of nature were admonitory enough, but they had no weight in the scale opposed to avarice or ambition; and yet, men, writers in different countries, fancied they could create a reformation by commentaries on national laws and belligerent practices....an idea, the futility of which every subsequent war has demonstrated.

It would have been perfectly practicable for the European states, in the 15th century, when there were some years of peace, to have advanced the civilization of states....men were every day becoming more happy and connected, by the progress of science and letters....but nations advanced no further, than avarice or ambition desired: a code of laws ought to have been framed, and could have been adopted, but it did not comport with the views of such tyrants and miscreants as Philip II. of Spain, or Henry VIII. Elizabeth, or Cromwell, and the Stuarts of England, to depart from a profitable uncertainty and force, to certainty and justice; they were opposed to any barrier against monopolies,

and founded their hopes of dominion upon the ruin of weak and neutral states. Hence the imperfection, the uncertainty, the contradictions, of what are termed the laws of nations, features characterising them, that every honest, and especially weak state, is interested in aiding to correct.

These conclusions, therefore, follow the consideration of the question...." what are the rights of belligerents, and the consequent duties of neutrals?"....1. That the principles or practices of states are established by no general authority; 2. That belligerent rights, as they are termed, continue to be arbitrary, uncertain, and varying in every war; 3. And that, therefore neutral states ought to resist the exercise of every authority or rule, not founded on the laws of reason and justice.

But it has been deceitfully said, that the rights which belligerents assume may be explained; and you may wish to know how those rights are explained, the better to understand the general subject, and the particular condition of our country at present. I shall therefore endeavor to give you the necessary explanations.

You must, however, never lose sight of the subversion of all moral principles, in the rule upon which they have laid down as the foundation of the system, that is, *nations making war have a right to make war;* and out of this they subsequently established another principle more outrageous, that *the rights of belligerents are paramount to the rights of neutrals;* or in other words, the rights of robbers and murderers, are superior to the rights of the peaceful and the virtuous.

The questions, which arose out of such ethics as these, and the belligerent practices on the ocean, in the wars subsequent to the discovery of America, were :....

1. To what belligerent ports may neutrals trade?
2. In what goods may neutrals trade with belligerents?
3. Shall the persons and property of enemies be free from capture, when on board neutral ships?
4. May neutrals be searched, and how?
5. What shall be the extent of a state's jurisdiction, on the seas bounding its coasts?

As there exists no code nor general authority, by which to determine those questions; only the causes that produced them, and the manner in which they have been decided, can be mentioned.

A free state, as I remarked heretofore, might refuse the belligerent jurisdiction, implied by those questions: but unresisted custom has introduced, and reconciled nations to a sort of submission or abstinence. The practices of the barbarians in the middle ages, were so repugnant to humanity, that it became an object of their more civilized successors attention, to deprive war of as many of its atrocities as possible, and to shorten its duration: hence, belligerents were *allowed*, on the score of necessity and humanity, to exercise certain privileges and powers over neutrals. For instance:

As a town besieged or blockaded, might defy all assailants and protract hostilities, if neutrals were allowed to supply all its wants; nations have agreed that a neutral cannot lawfully enter and aid such town. The answer to the first question therefore is, that a neutral has a right to trade, in goods not contraband, to any belligerent port, that is not in a state of siege or blockade; and no town or port is to be considered blockaded, that is not so well guarded by a belligerent force, both by land and sea, as to render an attempt, on the part of a neutral to enter, dangerous.

This rule, which is founded on motives of humanity, has been adopted by every civilized nation; in works on the laws of nations, in treaties between states, and by tacit consent, this rule, as above stated, is zealously maintained and adopted.

The motives, which induced nations to admit this right to belligerents, also determined the nature of the goods, in which neutrals might lawfully trade....it was considered, that if neutrals were allowed to supply belligerents, with powder, ball, arms, and other articles directly used in war, hostilities would be more sanguinary and longer continued; therefore another right was allowed to belligerents....each was permitted to prevent neutrals from carrying to its enemies articles used directly or immediately for warlike purposes.

In answer to the second question, therefore, neutrals may trade to belligerent ports, not blockaded, in any articles but those directly used for warlike operations.

This rule (also from motives of humanity) has been adopted by every civilized nation, and is sanctioned by the same authorities as the former rule. Nations have sometimes differed in their designation of *contraband*, but it is almost universally, and indeed justly, understood, that no articles are contraband but those employed for the destruction of man; for if this rule or description may be extended farther, where shall it cease? And if contraband can be construed to mean any thing else, it may be made to embrace the most innocent goods and articles, because they may support or clothe a people at war. The rule has been adopted, as I mentioned, for another reason, that particular states must be deprived of all trade, if contraband were extended even to articles capable of being converted to warlike uses....Russia, Sweden, or the United States could no longer export to states at war, *iron*, *timber*, *cordage*, *hemp*, *pitch*, *tar*, *lead*, &c.

I beg you, my friends, to bear in mind the causes that produced the grant of these rights to belligerents. The answer to this question, which is of much importance, necessarily too long to be inserted in this letter, it shall be answered in my next.

February 11, 1809.

LETTER IV.

"What are the rights of belligerents, and the consequent duties of neutrals?"

IN my last letter, I explained, to what belligerent ports, and in what goods neutrals might trade; and I shall now endeavor to answer the third question:....

"Shall the persons and property of enemies be free from capture, when on board neutral ships?

As this is a question of the first importance to neutrals, and to Americans in particular, I ask your undivided attention to the inquiry.

In the middle, or barbarian ages, the practice of belligerents, was to seize the persons and the property of their enemies, wherever found. There was no distinction made between the property of the *state* at war, and the property of its *inoffensive subjects;* there was no discrimination made between the *armed* and *unarmed* subjects; the sanctity of churches and of neutral territory, were alike despised; and *men* and *property* captured were the reward of the most strong and ferocious, the former becoming the *slaves* of the conqueror, the latter glutting the rapacity of his soldiers.

When the introduction of commerce, and the art of printing, began to shew their influence in Europe, and to dispel the Gothic darkness in which it had been enveloped; men and states saw and felt the necessity of a reformation in warlike proceedings; they wished to abolish in war those traits of cruelty and injustice, above mentioned, which characterised in particular, the 5th, 6th, 7th, and 8th centuries.

States, however, were not sufficiently enlightened, or were too jealous of each other, to seek a reformation in the only practicable and determinate manner; they all professed to desire a reform, and to deprive wars of as many of their inhumanities and atrocities as possible; but none proposed a conference, or a convention of ministers from all states, to fix a code for the guidance of all those, who should thereafter engage in war, or prefer neutrality.

The task of reformation, therefore, was left, as mentioned in my last letter, to writers in different countries, and at different times. These writers, in the first instance, removed only a part of the injustice of belligerents, but as the world advanced in knowlege and civilization, reformation in warlike practices gradually progressed also. The rights of belligerents and neutrals were explained, and nations confirmed the reformation

called for by those writers, in their treaties and intercourse with each other.

The greediness of commercial monopoly, however, raised a barrier against such a reformation on the seas, as nations on the continent of Europe had adopted in their land wars. In the latter, the rights of states at war, and of neutrals, were well explained and observed....but on the ocean, the practices of barbarians were adhered to. For instance:

In land wars, the conquered could no longer lawfully possess himself of the private property of individuals, nor of the persons of unarmed men: but in maritime wars, private property continued to be seized, and the persons of unarmed men were exposed to all the rigors usually experienced by prisoners of war taken in arms.

In land wars, a belligerent no longer seized the public or private property of his enemy, if found in a neutral territory; he could not even re-capture that which his enemy had taken and lodged in a neutral state....but on the ocean belligerents continued to seize the persons and property of enemies found in neutral ships.

This inconsistency so gross and so glaring, was the effect of commercial jealousy. The first book, published after the expulsion of the barbarians from Europe, laid down this inconsistent doctrine....it was the book before referred to, *Il Consolato del Mare*. This production, of which even the author is not known, written in an age scarcely half civilized, and adopted by a state that at the time maintained by force a monopoly of trade, continues to this day the grand authority of England for perpetrating on the seas the practices of barbarians, which in land wars have been abolished by all civilized states.

As there was no code, nor general authority adopted for the government of nations, the laws of nature remained the only criterion for the determination of all questions. According to these laws, all states possessed an inherent right to pursue their own happiness in every way, not infringing the natural rights of others. They, therefore, could have lawfully supplied, even warlike stores, to states in hostility with each other, and they could have lawfully forced their way into blockaded ports: but the influence of civilization producing a desire to diminish the means of human destruction, and to shorten the duration of wars, independent states voluntarily gave up a portion of their sovereignty, by abstaining from a trade in contraband, or to ports blockaded.

This reform, therefore, originated in motives of humanity, it was voluntary on the part of neutrals, and not to the consequence of any rights that belligerents could pretend to derive from the circumstance of their preferring war to peace. The cessation to trade in contraband or to ports blockaded, was an act of grace, for which belligerents should have been thankful; but

this favor had scarcely been granted when belligerents asserted it as a right of their own, and began to abuse it to the injury of neutrals. Custom, and conventional law, or treaties, have since fixed those gratuitous favors as if they were original rights to belligerents and as duties to neutrals.

States, therefore, having no obligations but the laws of nature, and having from their humanity alone abridged their sovereignty, in cases where its exercise would prolong and ensanguine war; it cannot be supposed, that they would still further surrender their rights, when the exercise of them could not afflict humanity, and when the abandonment of them would greatly injure their own welfare, their innocent trade.

This is the foundation, upon which I principally rest my answer to the question, " shall the persons and property of enemies be free on board neutral ships?" which answer is....that a belligerent has no right to take unarmed enemies, or the property of an enemy which is not contraband, when found on board a neutral ship.

I must here note a distinction, which it is useful you should understand. In land wars, neutral territory protects even soldiers and warlike stores; but, from the same motives of humanity, that governed states in relation to contraband and blockade, it is a custom or rule, sanctioned by treaties, that neutrals may not convey troops nor arms to belligerent territories, colonies, or conquests.

I maintain, then, that by the natural laws of nations, and the principles of universal good and justice, a neutral has a right to pursue its own welfare, by conveying the citizens and property of belligerents from the colonies to the mother country, or from port to port, when such conduct does not violate the laws of humanity by directly promoting the destruction of men. And, that, as the laws of nature are paramount to all others, no customs or conventions contrary to their dictates, are binding nor should be respected by free states.

Here I might rest the question, for I have never seen or heard an answer to this position; but, that, every argument or pretext, upon which the right of neutrals to protect the persons and property of belligerents is contested, may be exposed to your scrutiny, I shall proceed to a further inquiry.

The doctrine, laid down in the *Consolato del Mare*, at a period when Europe was but just emerging from barbarism, and adopted first by the Pisans, afforded a pretext, to their successors, to aggrandize themselves at the expense of weak neutrals. Whenever it suited the views of belligerents, they either adhered to, or abandoned, the practice of seizing enemies and enemies' property wherever found; justifying their usurpation, whenever exercised, upon precedent, not on right, or the natural laws of nations.

It appears, that, in general, it was the practice in the 14th, 15th, and 16th centuries, thus to violate neutral rights. In the 17th and 18th centuries, however, when the introduction of the mariner's compass, printing, and gunpowder....the discovery of America and a new route to India....had totally changed the commerce, manners, views, and interests of European states; the rights of neutrals became at length respected, and were only infringed by nations, which had so much power as to forbid resistance to its exercise: the latitude for commerce, was conceived to be extensive enough for all nations; those who attempted a monopoly of the trade of the world, became odious to the rest of mankind; and until within the 17th century, the attempt at universal monopoly, was not dared to be avowed, although the British navigation laws were founded on the contemplation of such an unsocial usurpation.

England, having, by every species of injustice to weak and neutral states, raised itself from insignificance to the first rank of commercial power, found that to maintain its consequence, it was necessary to observe a loose and indecisive language respecting the laws of nations. It adopted the long exploded authority of the *Consolato del Mare*, and obeyed it whenever it was its interest to do so. Pursuing its usurpation, in the war with France and Spain, in 1745, a number of Prussian vessels, laden with innocent goods, but belonging to belligerents, were seized and carried into British ports. Frederic, the great, immediately retaliated, by sequestrating the mortgage claims upon Silesia, which England held under the treaties of Breslau and Dresden. Before he took this decided step in his own defence, and in support of all neutral states, he had an exposition drawn up of the principles, by which he was actuated. This was the first time, that the rights of neutrals were formally discussed and explained. The Prussian manifesto was presented to the court of London, in 1752, and in 1753 an answer was returned, defending the practice of seizing enemy's property in neutral ships;....this answer was drawn up by four lawyers in the pay of the British crown, and was presented by the duke of Newcastle, the British minister.

In the war of 1756, three years after the protest of Frederic of Prussia, the British again usurped the power of seizing neutral vessels, conveying goods belonging to belligerents: they stopped and sent in for adjudication a number of Danish vessels. This produced an able defence of neutral rights by M. Hubner, under the authority of the king of Denmark. The British ministry attempted to answer M. Hubner, in a pamphlet written by Mr. Charles Jenkinson, afterwards lord Liverpool.

Here, then, we have formal and elaborate treatises, written under the sanction of the respective governments; and must presume that each contained the best possible arguments in

support of the respective doctrines. Of the memorial of Prussia, or the treatise of Hubner, I speak only from the character, given of them in different works of authority and merit, and upon these I form my conclusion of their excellence. It is of more consequence that you should know, what the British advance in support of their usurpation, and the substance is therefore now given, from Mr. Jenkinson, who is the standard authority in their admiralty courts.

He maintains, that belligerents have a right to seize the property of enemies, found on board neutral ships;

"1. Because numerous authors, of weight and celebrity, who have written upon the laws of nations, have maintained that right.

"2. Because the general practice of nations, as recorded in history, shews that it was at all times an acknowleged right of belligerents.

"3. Because a neutral, in carrying the trade of a state at war, supports its revenue, and indirectly increases the number of its seamen....thereby aiding the belligerent in conducting the war....a state of things calculated to induce neutrals to excite contentions, in the expectation of profit."

Such are the principal arguments, or grounds, upon which the belligerent claim is set up of regulating the commerce of neutrals. You will see, that they indirectly assert an absolute dominion over the ocean; and that the principles it admitted, would go to authorise *France* as well as England, if France had or should have a more powerful navy, to claim and exercise a dominion over the ocean. I believe I shall be able to expose the falsity of every one of these principles.

February 14, 1809.

LETTER V.

"What are the maritime rights of belligerents, and the consequent duties of neutrals?

I PROCEED, my friends, to examine the strength or justice of the reasons, which the British government has stated, in its defence of their claim to seize the property of their enemies, found on board neutral ships. The first reason is:....

"Because numerous authors of weight and celebrity, who have written upon the laws of nations, have maintained that belligerent right."

From the arguments stated in my former letters, you will, I think, have agreed with me, that, it matters not, how many

have written, or what writers have said, unless they assumed as the basis of their reasoning, the moral laws of nature and the principles of universal justice. If therefore, every writer upon the laws of nations had advocated the right of belligerents to seize an enemy's property in neutral ships, that right would neither be established nor justified.

But, what is the fact, as to the works on the laws of nations? Mr. Jenkinson and his copyists quote as their principal authorities, the *Consolato del Mare*, *Grotius*, *Heineccius*, *Binkershoeck*, *Gentilis*, *Loccenius*, *Voetius*, *Zuarius*, *Zouch*, *Montesquieu*, and *Vattel.*

If the number of the writers could determine the authority, I question whether the cause of neutrals would not be triumphant; on their side and opposed to the above are these writers, *Hubner*, *Galliani*, *Cocceius*, *Puffendorff*, *Totze*, *Wolfius*, *De Steck*, *Lampredi*, *Hennings*, *Busch*, *Martens*, *Schlegel*, and *Azuni;* all these, advocate the neutral rights, or question the justice of its infraction.

So much, therefore, for the number of the writers on the laws of nations; from which it appears that on this ground no claim can be rested. But I do not stop here, I will test the authority of the principal writers, quoted by the advocates of British usurpation.

The doctrine of *Grotius*, as laid down in his book, was palpably borrowed or transcribed from the *Consolato del Mare;* and it is more than probable that the majority of the other writers, quoted on the same side, had no other data, than the work of Grotius. What, then are you to think of a doctrine, that rests its justice and claims, upon a production, like that of the *Consolato del Mare*, which was a compilation of the ordinances of the petty cities of Italy, formed in the middle centuries? What claims can such a doctrine have, when its advocates go back to the age of Vandalism and ignorance, for authority to support it? It has less claim to obedience now than the canon law, or than the bulls of the Popes, for these are of a more recent date, and were passed in more civilized times.

But, further, I will endeavor to shew, that the principal writers quoted by the English government, *Grotius*, *Vattel*, *Binkershoeck*, have supported the cause of neutrals.

Grotius copied the *Consolato del Mare*, in 1624; but, in 1629, he wrote to his brother, announcing that he had just finished a treatise to prove, that the freedom of neutral trade ought not to be impaired in consequence of the existence of wars between particular states; his authority, therefore, ought not to be claimed in opposition to neutral rights. *Vattel* has these emphatic sentiments....

" Whatever a nation does, in a use of its own rights, and solely with a view to its own good, *without partiality*, *without a design to favor one power to the prejudice of another;* cannot,

in general, be considered as contrary to its neutrality, and becomes such, only upon particular occasions, when it cannot take place without injury to one of the parties, who has then a right to oppose it."

This is an absolute avowal of the right of neutrals to cover and convey every kind of property but contraband: the last member of the sentence, as above quoted, appears somewhat enigmatical, but the following words shew the sense of the author:...." For instance," says Vattel, " a besieger has a right to prohibit access to the besieged."

Binkershoeck declares, that a neutral has a right to all trade, when it makes no distinction between the states at war.

The authority of these writers, therefore, cannot sustain the British doctrine; or, if in other parts of their works, they are inconsistent with the above sentiments, they merit no consideration as authority.

There is yet another point of view, in which I can exhibit to you the rotteness of the first foundation, upon which the British writers assert their claim. As it is an undisputed rule, one that I presume every writer quoted by the British, is in favor of, that *neutral territory* lawfully protects, not only an enemy's property, but secures property taken from one belligerent from re-capture by another....how can the right to seize an enemy's property on board neutral ships be defended? That the ship of a nation is a part of its territory, as much as a dwelling house on its territory, cannot be questioned; because the sea is no nation's property, but a possession in common to them all: and in our own short history there are to be found instances, particularly that of Jonathan Robbins, in which the British asserted this rule and our government acquiesced. The inconsistency, therefore of the government, and its writers, who can in one case assert the right of the flag to secure to the ship every privilege allowed on shore, and in another case deny that right; such inconsistency, I say, is so gross that we cannot, in honor or justice, pay any respect to the cause attempted to be thus supported....it cannot be a good one.

Whether, therefore, the question is determinable by the number, or the consistency, of the writers on the laws of nations, I presume that it is here shewn, that the doctrine cannot be sustained, on the first ground taken by the British government.

The next argument is...." Because the general practice of nations, as recorded in history, shews that it was at all times an acknowleged right of belligerents."

Having stated, what was the practice, previous to 1780, I now proceed to that memorable era in maritime history, the alliance of the neutral states of Europe to support their rights by force, if necessary. This great event, so propitious to all just states, and so grateful to enlightened minds, to the honor of America, origin-

ated in the suggestion of one of her most distinguished sons. Franklin, who had contributed more than any other man to lay the foundation, of the freedom of his country, obtained by his character and influence at the court of France, not only the alliance of that state, but its agency to induce the northern powers to assert the independence of the seas. Vergennes, through the minister of France in Prussia, first secured the countenance of Sweden and Denmark, and then these powers obtained the concurrence of Russia; and Holland soon after joined the confederacy.

This alliance was necessary to the peace, commerce, and neutral character and freedom of the northern powers, as well as to the success of America; for England had announced her resolution to suffer no trade with rebels, and had put her threats against France into execution by the seizure of Russian and other ships, bound to French ports. The northern states, therefore, made known to the belligerents, in February, 1780, that they had determined to support, by armed fleets fitted out for the purpose, "the freedom of trade and navigation," and in particular these principles, founded upon the universal laws of nations:....

1. That it shall be lawful for any ship whatever, to sail freely from one port to another, or along the coasts of the powers at war.

2. That all merchandize and effects, belonging to the subjects of powers at war, and shipped in neutral vessels, shall be entirely free; excepting contraband goods, (cannon, mortars, musquets, pistols, flints, matches, gunpowder, sulphur, saltpetre, pikes, swords, saddles, or other articles positively forming munitions or implements of war.)

3. That, to ascertain what constitutes the blockade of any place or port, it is to be understood to be in such a predicament, when the assailing power has taken such a station, as to expose to imminent danger, any ship or ships, that should attempt to enter or depart.

4. That no neutral ship shall be stopped without a material and well grounded cause; and in such cases justice shall be done them, without loss of time; and, besides indemnifying, each and every time, the party aggrieved by being stopped without sufficient cause; satisfaction shall also be given to the power, whose flag may be thus insulted.

5. That all decisions in cases of capture, shall be determined by the principles here laid down.

Such was the decision of the memorable league of 1780, which it was declared should form the ground-work of all subsequent treaties. The principles having been made known to every court, they were formally adopted by *France*, *Spain*, *Austria*, *Naples*, *Prussia*, and even by *Portugal* the ally of England; so that, including the original contractors, *Russia*,

Denmark, *Sweden*, and *Holland;* all the states of Europe, combined in common defence, against the usurpations of *England*, whom it was necessary to treat as a common highway-man, by proclaiming a law of nations and announcing the punishment due to the disregard of all law and justice.

When this manifesto was received in England, an answer was returned; in which, without acknowleging the principles of the league, it was promised that no offence should thereafter be committed.

This promise, however was not kept, for the English continued to capture neutral ships. Russia then threatened open war, the vessels were released in consequence, and in less than two years (1782) *England herself acknowleged* the justice of the *above principles*, in a more *formal manner.*

Russia having offered its services to Holland, to act as mediator between that state and England, the Dutch answered that *no peace could be made unless England would consent to confirm in the treaty the rights and principles, set forth in the declaration of the armed neutrality.* Mr. C. J. Fox, the British prime minister, immediately wrote to the court of Russia:....

" His majesty *anticipated* the councils of the court of Petersburg, by *having offered* the Hollanders, *the entire liberty of navigation*, according to the treaty of 1674, between Great Britain and the republic; *a treaty*, by which *the principles of the armed neutrality are established in their widest extent*, to all the contracting parties. His majesty therefore, *accepts as the basis* of a separate peace with Holland, *a free navigation according to the principles* demanded by her imperial majesty, in her *declaration* (of armed neutrality) of February 26, 1780."

Here then is a most explicit and voluntary acknowlegement, by England herself; that the neutral flag secures all property, but contraband :....that contraband means only implements and munitions used directly in war: that neutrals have a right to sail along enemy's coasts, and from port to port: and that a belligerent has no right to stop a neutral, but upon just ground of suspicion:....yet, we are sometimes told, that England never has sanctioned these important principles.

Upon the strength of these notorious and universally interesting transactions, writers date the commencement of the modern laws of nations from the year 1780, in which they took place. Since that year, *twenty-eight* treaties have been ratified, containing and confirming the principles of the armed neutrality, and to *three* of these England was a party: *four* have been ratified since that time, which are hostile to, or silent respecting those principles; to two of these also England was a party, to one *Russia* was a party, and to one *America* was a party. It is due, however, to these principles and the cause of all neutral states, as well as to America and Russia, to say, that in ratifying principles adverse to those of the armed neutrality, a

faction only triumphed in each country: the principles and sentiments of both states remained unchanged, as the subsequent policy and conduct of both have gloriously established.

If it were true, that nations had sanctioned this assumption, by their general practice, its justice or force could not be established, if the only just authority, that of universal justice, did not sustain it. Precedent or indulgence, among ancient or particular states, cannot bind succeeding states, equally independent and more enlightened. What crime may not be justified, by a recurrence to history, if the rapacity and commercial jealousy of England, for three centuries derive an authority from the bloody record of their consequences? But nations are not now in a state of apathy or ignorance, they feel and know that, the greater the number of instances which history furnishes, of belligerent insolence or neutral tameness, it is so much the more necessary now to establish the freedom of the seas; and the evidence of this, is discernible in the present condition of England, *outlawed by all civilized states.*

But, let me inquire, what is this *general practice?* Treaties undoubtedly afford the best, the least suspicious authority; they are in this instance the best possible history.

As I have had occasion to say, heretofore, the seas of Europe bore a greater number of pirates than merchantmen, even so late as the 14th century; and on shore the number of bands of robbers, not to mention the individual plunderers, equalled that of the pirates....a state of things consequent to the semi-barbarism of the people, and the crusades which threw upon the shores of Europe disbanded corps of soldiers and seamen, after eight or nine fruitless attempts to extirpate infidelity by the sword, in Egypt and Syria. It is not therefore to such times as these, that we can or ought at this day to resort, for the true principles of *justice* or *sound policy*; England alone resorts to that polluted source, by her attachment to the *Consolato del Mare.* If in those dark times, it was the general practice to do as Britain yet does, that fact shews the propriety of reformation: but, even in the 14th and early in the 15th centuries, there are instances of improvement, as appears by the treaty of 1353, between England herself and the city of Lisbon, and by the treaties of 1406 and 1417, between France and the duke of Burgundy.

The generally adopted stipulations of the early treaties were simply these....that the contracting parties should protect each other against the pirates, and that in the event of a war between one of the parties and a third power, the other, or neutral, party should not be partial, or be the friend of one more than of the other belligerent, in trade or otherwise.

With the progress of commerce and civilization, a gradual but steady change was operating in favor of the rights of neutrals, and it is not a little singular, that even the Turks, so

early as 1604, were among the very first to adopt the laws of nature and reason, to which, although often sanctioned in her treaties, England is at this day opposed. Abandoning, therefore, former practices, every state in Europe, adopted a new policy and conduct, in particular treaties, in the 17th and 18th centuries; and among these states England herself took the lead, *as to the number of her treaties*, on the subject of neutral rights. So far from the present doctrine of England having a sanction in the generality of its adoption, the treaties prove the very reverse.

From 1642 to 1780, but *fourteen* treaties were ratified, that were hostile to the right of neutrals to protect enemy's property, not contraband; and this number is stated on the authority of an advocate for the British doctrine:....but from 1642 to 1780, *sixty-three* treaties were ratified, *establishing* the right of the neutral flag to cover all property but contraband. From 1604 to 1780, *sixty-four* treaties guaranteed the neutral rights; to *thirty-four* of which England herself was a party; and of the whole number, *fifty-nine* were ratified before the defence of the duke of Newcastle, and Mr. C. Jenkinson, that I am now noticing.

Within that term, from 1604 to 1780, there was an equal number of treaties, at least which contained no specific regulation; but as they were ratified by the very states which were parties to the other treaties, and as they refer to the general practice to determine questions arising out of war, these might be placed in support of neutral rights; putting them, however, aside, the general practice in civilized states, as evinced in their treaties, to the year 1780, confirms the right of the neutral to cover enemy's property, not contraband, and does not sanction the belligerent usurpation, as alleged by Mr. Jenkinson.

If any further proof were wanting, besides the absolute ratification of those treaties, guaranteeing neutral rights, it is to be found in the circumstances and terms of the treaty of Utrecht, between England and France, in 1713. The French had some success at sea in the war preceding that peace, but the English and the allies, the Germans and Dutch, under the duke of Marlborough and prince Eugene, had such unexampled good fortune on the continent, that Lewis XIV. was glad to sign a disgraceful treaty. Yet, in this period of triumph, and notwithstanding their inveterate jealousy of the French marine, the British ministry concluded and ratified the following article, which is the most clear and complete one that I can find in any of the treaties....guaranteeing to the utmost extent, the rights of the neutral flag:....

"ARTICLE XVII. It shall be lawful for the subjects of the queen (Anne) of Great Britain, and the most christian king (Lewis XIV.) to sail with their ships, with all manner of liberty and security, no distinction being made as to the cargoes, from any port to the places of those who are now, or shall be

hereafter at enmity with the queen of Great Britain or the most christian king: it shall, likewise, be lawful for the subjects aforesaid, to trade with the same liberty and security, in merchandize as aforesaid, to or from the ports of those who are enemies of either party; and not only from the ports of enemies to neutral ports, but from one place belonging to an enemy to another, whether they be under the jurisdiction of one prince or of several. And it is now stipulated, that *free ships shall give freedom to goods*, and that *every thing shall be free* and exempt, which shall be found on board the ships belonging to either party's subjects, *although the whole lading*, or any part thereof, *should appertain to the enemies* of either of their majesties, contraband (including warlike instruments and munitions only) excepted. The subjects of the enemies of either, shall also be free, excepting soldiers in actual service."

From this view of the conventional, or treaty-history of modern Europe, I am emboldened to say, that the second argument, in support of the claim to seize enemy property in neutral ships, is totally defective; and that, on the contrary, the practice of civilized states confirms the right, which neutrals possess by the laws of nature, to protect all property but contraband....to trade in whatever way they may think proper, consistently with that impartiality, which justice and reason inculcate and direct.

February 16, 1809.

LETTER VI.

"What are the maritime rights of belligerents, and the consequent duties of neutrals?"

HAVING shewn that a neutral has a right to carry and protect all belligerent property, not contraband, by the laws of nature, the authority of writers on public law, and by the general practice of nations: I might here rest the question for your decision. There is another pretext, however, for the belligerent usurpation, which although in some measure anticipated and answered in my fourth letter, it may be useful to notice here. It is said a neutral has no right to convey enemy's property:

"Because such carriage increases the revenue of the state at war, and indirectly the number of its seamen, thereby enabling it to prolong hostilities: a state of things calculated to induce neutrals to excite contentions amongst states, in the expectation of profit to themselves."

This pretext is said to be founded in the reason of the case, it is such an argument, however, as I think, can be refuted in this plain and neutral language.

In barbarous ages, belligerents undertook to reduce their enemies by poison, famine, and by cutting off all intercourse with them: neutrality was not only unknown as a condition,

but as a term; weak states being compelled to take a part in quarrels among powerful neighbors, in which they had no interest, and which usually terminated in their own ruin, whoever became the conqueror.

But since the civilization and distribution of mankind, into separate and distinct states, the practice and example of barbarians have been generally succeeded by just conceptions of the rights and duties of states: the laws of nature offering an unerring guide, nations acknowleged, that in preserving their own happiness, they had no right to abridge the happiness of others. Thus, when wars arose, states remaining in peace, lost none of their rights, they were simply bound to observe an honest impartiality; and as even Vattel acknowleges, if a state traded in arms, during a peace, it had a right by nature to pursue that trade in war.

Particular belligerents, however, intent only upon injuring their enemies, pretended that in wars there arose a new law, that of *necessity*, superior even to the laws of general justice. "You must not furnish arms," said the belligerent, "because self-preservation gives me the right to prevent my enemy from acquiring weapons and implements for injuring me." In treaties, this law of necessity was adopted and respected. This abridgment of perfect rights, at the instance of belligerents, induced them to demand another concession, that neutrals should not enter ports blockaded, and this also was admitted.

That these were concessions on the part of neutrals, and not actually founded on the rights, alleged to accompany warfare, is manifest from the treaties of all modern states; the exception in two instances, and two only, prove that all other rights were retained by neutrals.

At this point, indeed, concession justly ceased, for if it had not, where would be, and who could fix the limits of belligerent claims? If a state at war asserts a right to stop one species of commerce, or one particular trade, because the revenue of the enemy is thereby encreased; and if this usurpation is allowed; the necessary consequence, the very next pretext, must be, that all intercourse, whatever may be interrupted, for there is no trade that does not aid the state carrying it on.

This consequence, unfortunately, is not imaginary: the effect has succeeded the cause, particularly in the present war. But, although, the laws of nature and treaties have been violated, in almost every war, the rights and the nature of neutrality remain the same, they are as fixed and as just as ever, and can be abandoned only with disgrace.

The true, and the only justification for belligerent interference in neutral concerns, is when the neutral manifestly favors by treaty or otherwise, one of the states at war, more than the other; for a favor granted during the war to one belligerent, does an injury to the other, and justly exposes the neutral to

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the treatment of an actual ally in the war. But when impartiality ceases to be the safeguard of neutrals, there is no limit to the insolence of belligerents, or the injury to the neutral.

"A neutral," says Vattel, the authority so much relied on by England, "has a right to pursue any trade but contraband, when it carries it on for its own benefit, and without a design to favor one belligerent to the injury of another."

"A belligerent," says Barbeyrac, "has a right to require neutrals to maintain a strict neutrality, and not to serve his enemy more than himself."

On this point, indeed, all writers on public law seem to have agreed; the question then is capable of no perversion, the right of a neutral may at all times be decided by its conduct, and that conduct all the world must be acquainted with. If America, for instance, engaged in a carrying trade for England, France could have no right to forbid it, unless the like advantages were denied to the latter.

Other points may be answered by the neutral, in this way:

"In wars, our neutral rights are voluntarily, and perhaps wisely, abridged; our interests are necessarily thwarted. By the laws of nature we may pursue any trade, as our relinquishment of a part by treaty, sufficiently proves; we may do whatever is beneficial to ourselves and does not injure others. If we submit to all the restraints and vexations of war....the interruption of supplies; the loss of good customers; detention and examination at sea by every petty cruizer; and the losses by detention in belligerent ports by embargo, &c. If we submit to all these, because particular states, with whom we are in amity, choose to engage in hostilities with each other;....surely it is unjust to deprive us of any advantages that the war may create in our favor....advantages that result from your voluntary engagement in hostilities; such, too, as while they promote our interest, materially serve your own. We have a right to carry for either or both of you, such innocent goods, as you may wish us to carry, from your own inability to do so; and our right cannot be disputed but when we are manifestly partial, a conduct that our interest compels us to avoid. Nor is it any justification for infringing our rights, that one belligerent derives more revenue than the other, from our trade, since it is not the effect of our impartiality, but of the circumstances of the war.

"As to the pretext, that a carrying trade may create among neutrals the desire for wars, and even induce them to excite contention; that motive can have little or no influence in any state that has an import and export trade of its own. Holland might find an interest in its own neutrality and wars amongst neighboring nations, but its capability to produce them is so trifling as to give no reason to expect any effect, if it were disposed to pursue so unjust and unusual policy. But this pretext, it is at all times in the power of the belligerents to remove.

The influence of neutrals must promote rather than abridge, the interests of states, and the cause of humanity....for when the prospects of maritime plunder are frustrated and obscured by an acknowlegement of our neutral rights, the principal cause of maritime wars will be removed."

This, I trust, is the language of reason and justice, and I think refutes the pretext, said to be founded in the nature of the case.

From what I have said in this and the preceding letters, these conclusions are, in my opinion, deducible; from the laws of nature, the authority of writers on public law, and the practice of states.

1. That, as the ocean is as free, and common, to all men, as the air, no power has a right to exclusive privileges in using it:

2. That, as all writers agree that all property whatever is sacred and secure when in the dominions of a neutral state; and, as they are equally explicit in declaring the ship of a state a part of its dominion; all the rights of the state are possessed by the ship, in whatever sea or port it may be....subject to those restrictions only which are voluntarily imposed by treaty, those of contraband trade, and intercourse with ports blockaded.

In my 4th letter I briefly noticed the treaty history of England and her discussions with Prussia and Russia: it must be useful, however, to state more particularly, the instances and facts, which prove that her opposition to neutral rights is founded upon her own interested views and policy, and not upon the laws or customs of nations.

From 1642 to 1753, when the *first formal discussion* of neutral rights took place between England and Prussia, that is within little more than a century, England guaranteed and confirmed in *thirty-one treaties*, the right of the neutral to protect all enemy property but contraband.

The controversy with Prussia, is particularly remarkable.* The English had seized, in 1747, several Prussian and Hanseatic vessels, laden with belligerent goods: Frederic II. demanded restitution, in a formal memorial, wherein that great man defended the rights of the neutral flag: England returned, in 1753, a formal answer, refusing restitution, and asserting the belligerent claim to take the property of enemies, found in neutral ships: Frederic, on this refusal, sequestrated certain mortgage claims England had upon Silesia. This was a contest, of the utmost importance to neutrals, and it terminated in a glorious triumph; the British being compelled to pay, as they

* "Notwithstanding all the discussions by the duke of Newcastle and sir D. Ryder, &c. the king of Prussia having threatened to invade Hanover, the whole matter was put to sleep by our government privately restoring the value of the ships and cargoes, protected as it was asserted by the Prussian flag, although the property of enemies of England." *Preface to sir J. Marriott's Admiralty Cases. Vol. I, page 14.*

did on the 16th January, 1756, for the property seized in the Prussian ships.

In 1780,* another, and a still more important contest took place, the consequences of which are equally propitious to neutrals. All the states of Europe, leagued to defend their rights against England; and in 1782, the ministry of that country formally accepted, as the basis of their treaty with Holland, the principles of the armed neutrality.

To enable you, further to answer the question asked, I subjoin a list of the principal treaties, ratified during the last two centuries, by the states of Europe. Although, in this enumeration, England takes the first place, as to the number of the instances in which neutral rights were acknowleged; and, notwithstanding the above mentioned authoritative acts, you will find, that it has been the rule and policy of that country, to observe no laws or treaties, longer than her interests required. Her power was acquired by contempt for all such national and moral restraints and obligations, and can be retained by no other means: the distresses of other states, wars, and intestine commotions, are the only pillars of her power, and the only guarantees of her safety.

February 18, 1809.

TREATIES,

Either directly guaranteeing the neutral right, to protect all belligerent property but contraband, or confirming those by which that principle had been established.

PRIOR TO 1780.

Between England and France, *seven treaties*, in the years 1655, 1667, 1670, 1677, 1713, 1717, 1748.
England and Holland, *eleven treaties*, in 1667, 1668, 1674, 1678, 1685, 1688, 1709, 1713, 1717, 1726, 1748.
England and Spain, *nine treaties*, in 1667, 1670, 1713, 1715, 1721, 1729, 1739, 1750, 1763.
England and Russia, *one* in 1734.
England and Sweden, *one* in 1656.
England and Denmark, *one* in 1670.
England and Portugal, *two*, in 1642, 1654.
France and Turkey, *four*, in 1604, 1689, 1719, 1764.
France and Hanse-Towns, *two*, in 1655, 1716.
France and Holland, *six*, in 1646, 1662, 1678, 1697, 1713, 1739.
France and Spain, *one* in 1659.
France and Sweden, *two*, in 1666, 1672.
France and Denmark, *two*, in 1662, 1742.
Holland and Sweden, *three*, in 1667, 1675, 1679.

* "To the resentment of the empress of Russia, the British government thought proper to submit, and a quantity of sail cloth, sufficient to fit out the whole Spanish fleet from Ferrol to Cadiz, was restored upon renewal of the decree of condemnation in consequence of an appeal, and the captor absolutely condemned in costs and damages." *Preface to Marriott's Cases. Vol.* I, *page* 15.

Holland and Denmark, *one* in 1701.
Holland and Spain, *one* in 1648.
Holland and Portugal, *one* in 1661.
Holland and Naples, *one* in 1752.
Holland and Turkey, *one* in 1612.
Denmark and Genoa, *two*, in 1675, 1756.
Denmark and Spain, *one* in 1742.
Denmark and Naples, *one* in 1748.
Germany and Spain, *one* in 1725.
United States of America and France, 1778.

SUBSEQUENT TO 1780.

Treaty of armed neutrality, signed and agreed to by Russia, Prussia, Sweden, Denmark, Holland, Austria, Naples, Spain, and Portugal, in 1780-1-2.
U. States and Holland, in 1782.

	Sweden,	1783.
	Prussia,	1785.
	France,	1786, and 1800.
	Morocco,	1787.
	Spain,	1795.
	Algiers,	1795.
	Tripoli,	1797.
	Tunis,	1799.
Russia and	Turkey,	1783.
	Austria,	1785.
	Portugal,	1787.
	Naples,	1787.
	England,	1793.
	France,	1797.
France and	Holland,	1785.
	England,	1783, 1786.
	Turkey,	1790.
	Hamburg,	1789.
Holland and	England,	1784.
	Turkey,	1798.
Spain and	England,	1783.
	Turkey,	1782.
	Tripoli,	1784.
	Algiers,	1786.
Austria and	Morocco,	1783.
Denmark and	Genoa,	1789.

Second armed neutrality, in 1800-1, between Russia, Sweden, and Denmark.

LETTER VII.

"*What are the maritime rights of belligerents, and the consequent duties of neutrals?*"

HAVING considered the three first points of inquiry, arising out of the above question, I will now endeavor to answer the fourth, which, for the purpose of elucidation, may be thus stated...."Are neutrals bound to submit to be searched by belligerent cruizers?"

Besides the general importance of this subject, it has particular claims to your attention, from the circumstances, that a resolution is now before congress, for instructing the commanders of our merchantmen to resist a search, and that several newspapers are endeavoring to persuade the public, that to resist is unlawful. I shall endeavor to test the pretended right of search, by the laws of nature, the writers on public law, and the practice of nations.

One of the first and strongest injunctions, that men and states receive from nature, is to promote their own happiness and improvement; and with these injunctions are obviously conveyed all the rights necessary for their fulfilment. Commerce, or intercourse, being the most certain means for promoting the mutual civilization and welfare of states, no nation has any right whatever, by the laws of nature, to interrupt it; and as states have not only a right, but are bound, to preserve their happiness, an interruption of their just pursuits justifies resistance.

In land wars, it never has been attempted, I believe, to interrupt the peaceful intercourse of citizens even of states at war; much less, to prevent a commerce between the people of a nation at war and their friendly neighbors: on the contrary, wise statesmen have made every effort to confine their wars to the governments themselves, or to their armies, and not to extend their distresses to every class of the people, or to cut off all communication. It is certain, that on land, resistance would follow any attempt to interrupt a neutral trade with the people of a state at war.....Such being the case, it must be shewn that the laws of nature make any distinction between the rights of an intercourse by land and that by sea, before it can be allowed that belligerents have a right to exercise upon the latter, vexations and restraints, which, if attempted on land, would justify war. The flag of a ship entitling it, upon a free sea, to all the rights and honors of the state it belongs to, an attempt to interrupt its course cannot be justified by the laws of nature.*

When states engage in war, they have a right to harrass their enemies, but they are bound to act towards neutrals as if no war existed. So positive are the rights of neutrals, indeed, that they may refuse and resist a belligerent attempt to seize even contraband. The utmost that the law of necessity (of which so much is said and which has been so much abused) allows to a belligerent, is to delay or interrupt a supply of contraband, it can give no right to rob a neutral; and the contraband, if stopped, should be paid for. Necessity can never exist contrary to justice.

If the positions here stated, are as correct as I believe them to be, the laws of nature, instead of justifying, absolutely for-

* Jurisdiction, exercised in ships, proves it a part of the territory. The birth of a child on board the ship of a nation, is held to be a birth in the territory of the nation to which the ship belongs.

bid, any interruption of neutral commerce. The opinions of public writers are next to be considered.

As stated in a former letter, those opinions on the laws of nations, have no authority unless they are founded upon the laws of nature and universal justice; if, therefore, what is called the right of search were advocated by every writer, its justice would not on that account be established: but there is no instance, that I can find, in which it has been attempted to establish a right of search upon the authority of the laws of nature: all the writers, who discuss the subject, treat it as an effect or necessary consequence of the privilege granted by neutral states to belligerents, to prevent a trade in contraband. A southern newspaper noticing the resolution before congress, says, that no champion of neutral rights has denied the right of search; but this is manifestly a perversion of argument: every neutral advocate admits an inquiry, according to conventional law, but not one public writer of them all concedes what is properly meant, at this day, by the term....a right to search.

The same print says, that, as the *Consolato del Mare* laid it down, as the right of a belligerent to seize the property of an enemy in a neutral ship, it implied a right to search: but even if this inference were fairly deducible, which is not the case, that book must first be shewn to be a proper authority, before obedience can be claimed for it. Every modern nation, but England, has exploded it, and even the English adhere to its authority only when it suits their purposes:....for instance, the *Consolato del Mare* declares, that when a belligerent seizes the property of an enemy in a neutral, the neutral must be paid the freight of that property; but the British refuse to pay the freight, and even condemn the neutral vessel....again, the *Consolato del Mare* declares, that the property of a neutral, found in an enemy ship, shall be free, but the British from the time of Cromwell to the present, have violated this rule as well in their practice as in their treaties, a particular instance of which is to be found in the treaty of Utrecht. It is evident, therefore, that this book is no guide or authority whatever.

Binkershoeck and *Vattel* are also mentioned in the paper alluded to, as authorities to prove, that to resist a search is unlawful; but the opinions of these writers rest solely upon their justness, and therefore if they advocate an iniquitous practice, their authority passes for no more than the like groundless arguments in party newspapers. It is remarkable, however, that neither of these writers pretends to justify the right of search, as practised by England, and understood accordingly: *Binkershoeck* expressly limits the belligerent rights, to an examination of the ship's passports; *Vattel* declares, that "full credit is to be given to the passports and bills of lading produced by the neutral captain, unless fraud appear therein, or that good cause exists to suspect their validity." *Martens* thus defines the duty of the

neutral, "the ship of a neutral nation, should submit to the examination fixed by treaty." Every other writer, that I have had an opportunity of consulting, places the question on the true foundation, such as I shall presently state, and attaches to a violation of the neutral right, all the losses that follow.

As the laws of nature give no right whatever to a nation at war, to interfere with the commerce of neutrals, and as every interference justifies resistance; what is termed a right of search, can have no other foundation but the consent of the neutrals themselves. There is no doubt, but, in the middle ages, belligerents searched vessels, in the full sense of the term; but this was an act of force; it was one of those traits of barbarism, which honest and enlightened men must look back upon with horror: in these times there were no rights, no laws, power stood in their place; the seas were infested with pirates; and there was no safety but in a warlike superiority; but nations cannot consent to have these precedents now held up to justify our imitation.

The necessary consequence of this unlicenced conduct, was to induce succeeding nations to be more jealous of their privileges than they would otherwise have been. From humanity, neutrals consented, that belligerents might prohibit, the introduction of arms and military stores to their enemies, and the entrance of neutrals into blockaded ports; but when they conceded these privileges, the right to *search* for contraband was not granted, it was, on the contrary, expressly withheld. It is not wonderful, that those who have an interest in the subserviency of neutrals, should pretend that the right to search was implied in the right to seize contraband; but neutrals should not forget, that the right to seize contraband, does not properly or inherently belong to the belligerent, it is a voluntary concession of the neutral. As therefore, it was originally a concession, it is not to be supposed, that nations would have accompanied it with the abandonment of another right, the exercise of which, would be an indignity to an independent state, and an outrage upon its citizens. No neutral nation ever guaranteed a right to search, by treaty....the usurpation was often submitted to by weak states, but never acknowleged as a right; and England in the days of her greatest pride, under the administration of Chatham, declared that the attempt to search a British ship, was a just cause of war.*

The earliest evidence of this, that I can find, is in the history of the reign of queen Elizabeth. Under that princess, the maritime power of England was predominant and irresistible, and the disposition of her government was such, as to give it ample employment: her conduct, therefore, deserves the more particular notice. During her war with Spain, in 1589, the French car-

* See lord Chatham's declaration in the Appendix.

ried on an extensive trade with that country; Elizabeth, suspecting it to be in a great measure of a contraband nature, ordered her minister, to require of Henry III. of France, to permit the merchant vessels of his subjects to be searched by her cruizers; the answer is as remarkable as the application...." I cannot consent," said Henry, " because it would introduce practices injurious to trade, and afford belligerents a pretext to plunder neutrals."

As remarkable an instance occurred, during the protectorate of Cromwell. This man placed the naval power of his country upon a stronger basis than it had before been, and as well as Elizabeth, employed it in every way calculated to suppress a rivalry on the part of any other state; he held the trident in his hands, yet he asked in vain for *permission by treaty*, to search the Dutch merchantmen. His object was well understood by the Dutch; they refused to sanction the privilege by treaty, but appear to have tacitly submitted, although the submission was protested against by their admirals....the remark made by the brave admiral de Ruyter, when he heard that his government was averse to warlike opposition to search, was worthy of his character...." If we submit," said he, " it will doubtless expose us to insults, when we least expect them; these will be offered designedly by the English....they will search our vessels at their pleasure; take possession of them on the slightest pretensions, and afterwards treat us as infamous poltroons." The event justified the prediction; the British have treated and always will treat as infamous poltroons, not only the Dutch, but every other people so spiritless as not to resist a violation of their rights.*

The French and Dutch were not alone, in refusing to ratify in their treaties a manifest usurpation; Cromwell, in particular, endeavored, with great zeal, to obtain such an acknowlegement from the petty states of Europe, but without success.

So uniform has been the opinion of nations on the subject, that I know no instance in which search has been acknowleged; and, as treaties alone give authority for any stoppage at sea, I quote and subjoin the stipulations of all the treaties for two centuries, that have relation to the present question. From this conventional law, it appears:

That belligerents are allowed to stop merchant vessels only.

That belligerents are forbidden to approach within cannon shot of neutral vessels.

* " In 1653, the English commissioners presented a project, of 27 articles to Holland, the 15th of which proposed that the Dutch ships, both men of war and private merchantmen, besides striking their flags, should suffer themselves to be visited, if required, and perform all due offices of honor and acknowlegement to England, to whom the dominion and sovereignty of the British seas of right belonged:"....But this was rejected by the Dutch. *Sir Philip Meadow's discourse read before Charles II.*

That two or three persons only are allowed to board the neutral.

That the ship's papers are to be received as sufficient, and the only evidence, unless fraud manifestly appears.

That the examination cannot lawfully extend beyond the neutrality of the ship, the innocence of the cargo, and its destination.

These are the only stipulations, by treaty, relating to what is now termed the right of search....if no treaty exists between two states, each has a right to resist any stoppage or examination whatever. Let us inquire, what are the circumstances of the pretended right of search, claimed by the English....

They stop men of war, or national ships, as well as merchantmen.

They fire as often as they think proper to bring ships too; and approach as closely as the condition of the sea will permit.

They order the captain, mate, and often a majority of the crew of the neutral, to come on board their cruizers, and they send as many of their own men on board the neutral as are necessary to break open letters, trunks, and packages. After looking over the ship's papers, they go on board the neutral and order the crew to be mustered; if any of them have names, familiar to the ears of Englishmen, they are pressed into the British service; and the neutral thus plundered and weakened, is permitted to pursue the voyage as well as she can.

At other times they do not even peruse the ship's papers, but pronounce them false, send the vessel in for adjudication, and if it has the good fortune not to be condemned, may be content with the loss of time and expenses.

This outrageous conduct, so opposite to the rights of nations, and repugnant to the express stipulations of treaties, has been invited and encouraged by acquiescence; at first, merchant vessels only were abused, and no resistance being made, (at least by the American government,) the British extended their powers to stopping the Baltimore sloop of war in 1798, and seizing a part of its crew; this not having been resented, they completed their insolence by the attack on the Chesapeake.

Such abuses as these, call for resistance on the part of every state: there is no treaty between the United States and England, acknowleging any right to stop American vessels, and as the right has never had any other origin or authority than treaties, it does not exist, and an attempt to enforce it must be an usurpation justifying war.

The consideration of this part of the subject shall be closed in my next.

February 22, 1809.

LETTER VIII.

"What are the maritime rights of belligerents, and the consequent duties of neutrals?"

I WOULD not have departed from a general view of the question before me, but that the subject is now under consideration in congress, and attempts are making to prevent the adoption of a wise and necessary measure. The general nature and origin of what is termed the right of search, I have explained, and shall now notice some remarks, offered in a southern newspaper, in support of British usurpations.

"The right of search, (says this print) is established by ancient and modern law, as a right incident to a state of war."

A want of information on a subject of this nature, would be excusable, but the open assertion of falshood, in support of injustice in a public print of the country, is a shocking evidence of depravity, and of the direct influence of the oppressing government. What is the real truth, as to what is here asserted; it is that there is no such thing as ancient law on the subject, and as to modern law it has no existence but in treaties, and their character will be found in the quotations subjoined; if by ancient and modern law are meant the opinions of writers, they are expressly opposed to this pretended right of search.

"The famous northern confederacy during our revolutionary war attempted not to resist this right."

The reverse of this is fortunately susceptible of demonstration: the 4th section of the 3d article of the armed neutrality is as follows;

"No neutral ship shall be stopped, without a just and well grounded cause; and, in such cases, justice shall be done them without loss of time: and besides indemnifying, each and every time the party aggrieved are thus stopped without sufficient cause, full satisfaction shall be given to the high contracting powers, for the indignity offered to their flag."

This determination was carried with effect; for, the British continuing their usurpations, Katherine II. threatened war unless reparation was made, and it was made.* This very stipulation or principle was afterwards adopted by England in her treaties, particularly with Holland.

"During the present war, between England and France, (continues the abovementioned writer) another confederacy was formed by the same powers that composed the former: the first confederacy was not opposed with force by Great Britain,

* See note, page 31.

the second was, and was broken up, and the modern law of nations abandoned."

England did not oppose the first confederacy, because she was not able to do so; and although Russia was detached from the second, it is not true that it was therefore broken up, much less that the modern law of nations was abandoned...the whole of this is a fiction;....lord Grenville, in 1801, in a note to the Danish minister respecting the second league of armed neutrality, said, "the British government had flattered itself the principles of the former league had been completely given up?" but, in his answer, the Danish minister, thus emphatically expressed himself:

"With respect to the principles of the northern powers, respecting the sacred rights of neutrality, *they have not been abandoned:* Russia, in her belligerent capacity (as an ally of England) has only suspended their application, and Sweden and Denmark declare in the face of all Europe that their system of protection in favor of innocent commerce, *is invariable.*"*

But, says this southern print...." Sir Wm.Scott established, in the case of the Swedish convoy, the right of search, and the liability of the neutral to seizure for resisting it."

From the apparent importance with which the name of sir Wm. Scott is brought forward, a person not conversant with such subjects, might be led to think him some acknowleged authority, some dignified and impartial person, admitted by all nations to be equally pure and wise; certainly these conclusions follow the above grovelling language of a pretended American; how much will you be surprised, then, to learn, that this sir Wm. is an English judge of admiralty, obliged to obey the orders of the British privy council, and to give judgment according to *their orders*, and not according to the laws of nations, justice, or treaties....that it is so much the interest of this judge to condemn, as he receives a part of the spoil, and that he is a pensioner of the British government, as may be seen by referring to the official lists of pensioners and placemen.

The authority of this man is of no more importance, than the order or decree of the bey of Tripoli: but, if there be a peculiar sanctity in British courts, I can shew, that as wise and good judges as sir William, and in more honest times, decided against the usurpation now claimed by England, and shamefully defended by men in America, pretending to value its honor and rights. The case I allude to is reported in *Park's Insurance*, p. 83 and 363.

A Tuscan or neutral vessel, with a neutral cargo, had sailed during the American war for London: on her voyage, being met by a Spanish cruizer, she resisted a search, but was overcome, carried into Spain, and there condemned for that resist-

* See appendix A.

ance. The vessel having been insured in London, an action was brought by the owners upon the policy: the under-writers alleged that, they were not bound to pay, because the Tuscan captain had voluntarily subjected his vessel to confiscation by resisting the search of a belligerent cruizer.

Here then was a case in which the English, if at all concerned, might be supposed willing to determine against the neutral; but as the judges who tried the cause, were not bound, like sir Wm. Scott, to obey *the orders of a privy council*, and as they had no interest in the spoil, they unanimously determined in favor of the neutral, according to the laws of nature and justice. Their sentiments are so much in point, that they are worthy of quotation at large:

Justice WILLIS...." If a ship be neutral, and she be stopped, those who stop her must pay for the detention. But, it is said, *she must stop to be searched....I find no authority for this position.*

Justice ASHURST...." I do not find that a neutral must submit to be searched. *It is rather an act of superior force, always resisted when the party is able;* and the right falls within this position, that the belligerent attempts to search at his peril."

Justice BULLER...." The answer given to the claim of search is conclusive, that the party does it at his peril: the practice of the admiralty confirms it, for they give costs in cases of improper detention; which they would not do, if neutrals were, at all events, liable to be stopped."

And, in answer to the plea, that, as Spain had a law declaring any vessel resisting search liable to confiscation, the capture of the Tuscan was lawful, judge *Buller* said, " The detention, in conformity with the ordinance of a foreign state, is a risque that the insurer runs: the ordinances of particular states form no part of the laws of nations, and a neutral captain is not culpable if he infringes them."

Here, then, is positive British authority, if no other will answer those writers, to support the outrages committed against the rights and honor of the United States, and from which it appears that the laws of nations do not require a neutral to submit to search; that belligerents have no right, arising from war, to interrupt a neutral trade; that if all the states of Europe agreed that a belligerent had a right to search, America might lawfully resist, for the ordinances of particular states are not obligatory upon other states.

I will again refer the reader to the appendix, for the declaration of the celebrated lord Chatham on this subject; which shews that the British government does not admit its own vessels to be searched; so that their practice and the decisions of their courts are in evidence against their recent usurpation of power.

From every view, of this subject, therefore, I conclude, that belligerents have no privileges in relation to neutrals, but such

as neutrals voluntarily consent to give, in their treaties:....that where no privileges are allowed by treaty, an attempt to exercise any of them, justifies resistance:....and, that, when belligerents attempt to encroach upon privileges allowed, neutrals should recall them altogether.

February 23, 1809.

TREATIES

Which fix and determine what belligerent cruizers may do, when they meet neutral merchantmen at sea.

Treaty of Munster, 1648, between *Spain* and *Holland*...." The vessels of the states of Holland, shall not be interrupted in their trade with any port or place whatever, even if such place should belong to a power at war with Spain. But permission is not hereby given to trade, in contraband goods; and in order to prevent such trade and that commerce may not be interrupted, the vessels of Holland when they enter Spanish ports, intending to sail from thence to an enemy's ports, shall shew their passports stating the nature of their cargo, but they must not be searched or visited, far less detained. But when vessels of Holland shall *be met at sea*, and not intending to break bulk in a Spanish port, they shall not be obliged to give any account of their cargo."

Treaty of Upsal of 1654, and confirmed in the treaties of 1656, 1661, and 1700 between *England* and *Sweden*...." The ships of either party met at sea, by the men of war or privateers of the other, upon producing their passports, and no just cause of suspicion appearing, no further inquiry shall be made respecting the cargo or crew; much less shall the ships be interrupted or molested."

Treaties between France and England....That of 1655 " the ships of either nation may carry commodities of any kind to the enemies of the other, excepting contraband, or to places blockaded; and if the commanders of men of war or privateers, shall interrupt the vessels so trading, they shall, besides being corporally punished, pay all damages if they are able;" 1677, and renewed at Ryswick, 1697: " vessels of either party met at sea, on producing their passports, shall not be detained; violators shall be corporally punished;" 1713, *treaty of Utrecht*: " It shall be wholly unlawful to search vessels; men of war and privateers shall not approach within cannon shot, shall send but two or three men to examine passport as fixed by treaty, and if no fraud appears, it must satisfy;" 1748, *Aix la Chapelle*, between England, France, and Holland, renews this principle....1783, again renewed.

Treaties between France and Spain; 1659 to 1763...." The vessels of either may trade with enemies of the other, in all goods but military stores and furniture: men of war meeting merchantmen shall not approach within cannon shot, and shall send but one or two men to examine passports, which being correct shall preclude further inquiry."

Treaties between England and Holland; 1668, 1674, 1678, 1685, 1689, 1700, 1709, 1713, 1784...." vessels at sea or elsewhere shall not be detained: the passport shall preclude all inquiry or search; and unless there appears manifest fraud, good faith shall always be given to it."

The same principles are established in the following treaties, between:....

England and Denmark, 1690, 1701.
England and Turkey, prohibits any examination, 1675.
England and Spain, 1713, 1715, 1783.
England and Barbary powers, 1662, 1750, 1751.
England and Russia, 1766.
United States and France, 1778, 1800.
and Holland, 1782.
and Sweden, 1783.
Armed neutrality, 1780.
Second armed neutrality, 1801.

LETTER IX.

"*What are the maritime rights of belligerents, and the consequent duties of neutrals?*

THE last point, for consideration, arising out of the above question, relates to the jurisdiction of a state, upon its sea coast; and as the decision of this point may be more correctly ascertained, by making the inquiry general, I will endeavor to explain....what is the distance to which a nation may justly extend its maritime dominions?

§ 1. PRETENSIONS OF PARTICULAR STATES.

Among the ancients, it does not appear, that there were any acknowleged or defined limits, beyond which a particular state could not exercise authority, without abridging the rights of others; power seems to have determined the only boundary. The Greeks and Carthagenians, especially, not only interdicted communication with particular ports and coasts, but expelled the vessels of other states from the seas under their warlike control....the latter exercised a supremacy, by means the most unjust and inhuman. The Romans too, as soon as they became masters of the shores of the Mediterranean, refused admittance to the vessels of other states, within the straits of Gibraltar.

Such perversions and abuses of the gifts of nature, were, however, insignificant, when compared with the claims of modern states. Until the 15th century, there were, comparatively, but a few petty seas to traverse and control; subsequent discoveries opened to the view of Europe, boundless oceans, inviting employment, and affording inexhaustible means for enterprize and emolument. But, no sooner had the Portuguese discovered the new route to India, than they asserted an exclusive right to navigate the seas, bounding their discoveries: aware of its brittle tenure, they obtained a *confirmation* of their claim from the popes: and so potent was this authority, that even the English consented, in several treaties, to abridge their unquestionable right to navigation in those seas.

The Spaniards, following the example of their neighbors, claimed dominion over the whole Indian ocean, and the popes were so *liberal* as to guarantee this usurpation also. The states of Europe, however, who began to understand their interests, refused to acknowlege the pretension: Philip II. having complained to queen Elizabeth, that her subjects were in the habit of visiting seas and territories belonging to Spain, that princess answered "that she could not acknowlege the right he pretended to exercise, and that he might with as much justice and effect forbid the use of the air as that of the sea." Here ended the pretensions of Spain.

The Dutch, as soon as they supplanted the Portuguese in India, forgetting their situation in Europe, pursued the policy of their predecessors. Spain acquiesced, and consented in 1648, to restrain its commerce in the Indies; but England disregarded the claim, pushed its enterprizes with success, and ultimately superceded the Dutch and every other European nation in the eastern oceans. This is the more remarkable, as whilst the British were quarreling with the Dutch in Europe about the British seas, the latter were using the British arguments to exclude their rivals from India. The attempts of the Portuguese, Spaniards, and Dutch, to usurp the navigation of the ocean were equally fruitless; and particularly owing to the enterprizes of the British.

This conduct of England, however, was the effect of her commercial ambition and her avarice, not of any desire to give freedom to the seas. This is evident from the pertinacity, with which she asserted a dominion over the four seas surrounding the British islands, comprehending in this pretension, with her characteristic contempt of public and moral obligations, the waters on the opposite coasts of France, Spain, and Norway. As she had not paid extraordinary respect to the bulls of the popes, the claim to the British seas was founded upon the right of prescription.... that is, because she had used them or asserted the claim, time out of mind, the seas were said to be of right her property. Until within the last century, this claim created incessant warfare, between England, France, and Holland: but, at the close of every

war, however disastrous, the French, especially, refused to acknowlege her pretension; and in the treaty of Breda, Louis XIV. would not consent even to call the neighboring seas, by the accustomed term, the British sea or channel....the words used were St. George's channel. If the claim has not latterly been upheld, with the former vigor, it has not been abandoned: for in the case of the Swedish convoy, tried in 1799, sir Wm. Scott, alleged that the resistance to search derived additional criminality, from the circumstance of its having been made in the British channel:* the laxity, is perhaps, to be accounted for in the pretensions to universal dominion on the seas, which, though not openly avowed, is absolutely carried into effect.

Besides these instances, in which dominion over certain seas has been asserted, the claims of the Venetians to the Adriatic, of the Genoese to the Ligurian, and the Poles and Danes to the Baltic, seas, evince the injustice of particular states, and the necessity of some settled laws of nations, that cannot be abandoned and abused at the discretion of every piratical and ambitious government.

It is to be remarked, however, that, with the exception of England, all nations have at this day abandoned claims to jurisdiction beyond what common liberality and prudence justify.

§ 2. OPINIONS OF WRITERS ON THE SUBJECT.

Inconsistent, as the above mentioned claims were, with the laws of nature and the rights of nations, they all had their advocates; even the pretensions of Spain and Portugal, were as strenuously sustained by the pen as by the sword. *Selden*, *Puffendorff*, *Heineccius*, *Wolfius*, and other able men, supported pretensions at this day exploded: their positions seem to have been founded upon prescription, treaties, and force.

But the advocates of maritime freedom are much more numerous, and at least of as distinguished abilities. *Grotius*, *Binkershoeck*, *Galliani*, *Valin*, *Vattel*, *Hubner*, and *Azuni*, have placed the question almost beyond the reach of controversy. As *Grotius* and *Vattel* are in general the favorite authorities of the English, the sentiments of these writers respecting the claim to the British seas, are of the more consequence. The former declares, that "if any nation attempts to exercise a superior control upon the open sea, it violates the laws of nature and nations; and all states are bound to rise up and resist the tyranny, since their welfare is concerned." Vattel says, "the right of fishing and navigating in the open sea, being common to all men, the nation that abridges it, injures all states, and justifies war:" again, "if a nation finds that from time immemorial, it has possessed the exclusive navigation of a particular sea, it has

* If this argument was even colorable, what is the character of the attack on the United States frigate Chesapeake?

not, therefore, a right to deprive others of a use of it." Some of the English writers join in these sentiments; particularly *Hume*, in his history of England, and very lately, *Dr. Arthur Browne*, professor of civil law in the college of Dublin: speaking of the claim of England, this gentleman says, "the claim of England to the dominion of the neighboring seas, was as extravagant as it was haughty; it could have no foundation but in treaties; and if it rested merely on use, was supported solely by power."

The pretension to a dominion of the ocean, founded upon naval superiority, is thus justly and forcibly answered by *Galliani*: "what would the advocates of this doctrine think of a sovereign, who having two hundred thousand men in his pay, should, for that reason, suppose himself master of those princes, who had only thirty or forty thousand men in their service? Would it not be confounding the ideas of right with those of power, and seem to establish a theory always unjust, often arrogant, and sometimes, in spite of its success, vain and ruinous."

Several writers have attempted to sustain the right of dominion, and even of property, in the ocean, by supposing it susceptible of the same control and division as the land. This has been answered in these terms:

Property in land originated in the necessities of man; before lands were parcelled out for cultivation, they did not furnish adequate sustenance; since the distribution, they have not only furnished abundance but superfluity, creating the calls for barter and exchange. Dominion on land originated in the necessities of society, men, for their safety, giving a control to government over their lives and fortunes.

On the other hand, the seas cannot become the property of particular states, nor can they be divided: all nations have a common property, since the ocean is the only medium of intercourse between some civilized nations, since it furnishes all the objects that all men can wish to attain by its use, and since its use by each nation tends to the happiness of all the rest. Dominion cannot be exercised by one or by a number of states, since it implies not only lawful possession, but ability to exercise it, which, in the true sense of the term, is not practicable.

According to the opinions of writers on the laws of nations, therefore, a predominant or exclusive control over the open sea, cannot be justified by the laws of nature, by a superiority of power, nor by custom.

These opinions relate to the open sea, but there are particular seas or gulfs, over which all writers agree, a dominion may be exercised: a sea, all the shores of which are under the dominion of a particular nation, and the entrance into, which that nation can oppose or prevent, is considered its property: in like manner, if two or more states possess the shores of a particular

sea, and can prevent the entrance of ships belonging to other states, they may do so, if they think proper; but one of the states bordering on the sea, has no right to oppose an intercourse that one or more of the neighboring states may choose to encourage.

The above general sentiments of writers relative to the ocean, are confirmed in all modern treaties; there does not exist one, in which a claim to a greater extent of dominion is allowed, than safety demands. What this extent is, is therefore to be considered. Writers and treaties, of the 17th century, stated the distance to which nations might extend a jurisdiction on their coasts, some at 100, others at 60, and a few at 10 miles; in the 18th century, the rule became almost universal, that the jurisdiction of a state, of right, extended three miles from the shore, that being the distance of cannon shot, and this principle is now adopted by all writers and in all treaties. The right of a state to this extent at least, is evidently just, since without interfering with the rights of others, the state is thereby enabled to maintain its fisheries and coasting trade; to guard against smuggling; and to maintain its sovereignty and neutrality, during wars between neighboring states.

§ 3. CONSEQUENT RIGHTS OF NEUTRALS.

The above principles being now generally respected, the rights of the neutral state are readily ascertainable, upon the ground of sovereignty:....if a belligerent attacks an enemy within cannon shot of the neutral shore, the sovereignty of the neutral is violated, and reparation is demandable:....if a belligerent takes an enemy's ship within cannon shot of the neutral shore, it is not lawful prize, and the neutral is bound to demand reparation: a ship taken from a belligerent cannot be re-captured within the neutral jurisdiction: a belligerent ship, sailing from a neutral port, and from within neutral jurisdiction, cannot lawfully be followed by an enemy's ship, until after a lapse of 24 hours. These are considered by writers, and acknowleged by all states but England, privileges necessarily belonging to a neutral; and indeed are so essential to its character, that none of them can be abridged or abandoned without manifest injury and dishonor.

February 25, 1809.

LETTER X.

I HAVE endeavored to present to you, my friends, as distinct a view as possible, of the real character of what have been termed the *laws of nations*, and to explain the origin and force of what are called *belligerent rights*. That I have given

a correct analysis of the former, must, I think be observed, when you reflect, that the freedom and privileges, which these laws are said to guarantee to neutrals, have ever been violated and abused, and that they have now no longer any existence whatever. Concessions on the part of neutrals, were represented by belligerents as their inherent rights, and these rights have been gradually extended, until a neutral flag no longer appears upon the ocean.

In any ordinary circumstances, the knowlege, that the violation of neutral rights has reached the utmost bounds of enormity, would be sufficient to fix the attention and call forth the energies of every neutral state: it would be unnecessary to inquire, how the crisis has been produced, and what state has been most forward in usurpation. But in the present state of American affairs, it must not only be useful to make such inquiry, but it is rendered necessary by the clamors of a faction within our country. Our rights have been, in the whole course of the present war, the sport of the belligerents; and, now that we must assert them, if we hope to maintain a character among nations, it becomes us to determine, whether we are bound to extend our vengeance to both belligerents, and if not, against which of them we have the greatest cause for complaint.

A factious print, devoted to England, (the New York Evening Post) asks these questions:

"Shall we have war with France, the first aggressor, and, with regard to us, the weakest enemy?"

"Shall we declare war with England? Or shall a useless embargo be continued?"

These questions imply, that the original aggressor is answerable for all the injury that may follow, and that, as England merely retaliated, we have no cause of complaint against her; now, although I deny the justice of retaliation on the property and rights of a neutral, for the injury done by a belligerent, I am willing to assume this rule of the Evening Post, as correct; the question therefore reaches this point; as stated by "a Farmer," whose inquiries I am answering...."what has been the conduct of France, &c.?" It is my intention, to endeavor to shew, that England has been the constant and principal violator of neutral rights at all times; that it has ever been her policy to destroy the commerce of other states; and that in the present war, she was the original, and has been infinitely the vilest aggressor.

As the conduct of the English to Holland, exhibits, perhaps, in as a strong a light as is necessary, the perfidious and jealous character of their government, and as it is confined to circumstances antecedent to our revolution, I will, in this letter, give as concise a sketch of it, as the subject requires. In considering this subject, you must bear in mind, my friends, that, the excuses, which England at this day makes for her conduct, did not exist in relation to the Dutch....they were a people as inca-

pable as unwilling to threaten or disturb the interests of Europe, or to subjugate others; they excited apprehension by their energy and industry, but these were as terrific to England as the arms of France, and hence their fate.

CONDUCT OF ENGLAND TO THE DUTCH.

The Dutch, being compelled by the nature of their country, to turn all their attention to commercial pursuits, laid the foundation of their future trade, before the English had a vessel at sea, or even a commercial character. They hired their vessels to Charlemagne, and other princes of the continent; and were so fortunate as carriers, even at this period, that they turned a portion of their attention to other commercial pursuits. About the year 800, they began to engage in the herring fisheries on the coast of Scotland, and encreased in wealth and consequence by overcoming obstacles that to any other people would, perhaps, have appeared insurmountable: at this time the English had acquired some marine force, and among its earliest efforts were an attempt to subject the Dutch fishermen to tribute; and they insisted upon an exclusive right to navigate the seas surrounding Britain. The Dutch, refusing to pay the tribute, were repeatedly driven from the fisheries, and particularly in 1297: they remonstrated at first, and even consented not even to approach within eight miles of the coast, but the English persisted in their claim, and even added another, requiring the Dutch to salute all British vessels met at sea. The Dutch at length resorted to vessels of war for their defence.

In these circumstances originated the wars, that, for above two centuries, were carried on, almost without intermission, between these states. The conduct of England originated in that insolent and domineering spirit, that has constantly marked her character; it had not at first even the excuse of rivalry, for the British were unable to engage in the trade, from which they wished to drive every other state: until the 13th century, their marine had a piratical and not a commercial character, and even so late as 1415, they were so destitute of shipping as to be obliged to transport troops to the continent in Dutch vessels. In their early wars with the continental states, they paid no respect whatever to neutrals, and particularly in 1337, seized every Dutch vessel they met proceeding to France, regardless of the nature of the cargo. Under all these disadvantages, however, the Dutch succeeded in forming a marine, and, until the reign of Elizabeth, maintained a naval superiority; extending their trade to India, and there establishing, in imitation of Spain and Portugal, those monopolies, which, although they served the present interests, tended to depress the character of Holland, and expose it still more to the hatred of England.

In 1576, the English, for the first time, turned their attention almost exclusively to commerce; and commenced a new

mode of attack upon the Dutch. Elizabeth determined to remain in peace with them, but to keep them involved in war on the continent: she obtained a double purpose by aiding the Dutch against Spain; the latter was weakened, and the former purchased the faithless friendship of England only by surrendering the important trading towns of Flushing and Brille, and the fort of Rammekins. The Dutch marine consequently became depressed, and the English gained the ascendancy, which was followed by several successful efforts to destroy their India trade, their fisheries, and their carrying trade. With the reign of Elizabeth, the spirit of persecution did not cease, though the ability was checked: and the Dutch, for a time, regained in a great degree, the influence they had lost in the 16th century.

In 1616, they purchased the towns Elizabeth had acquired; but, although, James I. consented to the sale, from avarice, he conceived a fatal enmity to Barneveldt, who had recovered these towns for his country. This minister had, besides, refused to acknowlege the supremacy of England on the seas, and resisted the claim of tribute for the fisheries. So formidable a man it was necessary to remove, and so successfully were intrigue and corruption employed, that his own countrymen became the instruments of his destruction; he perished on the scaffold, after a long life of faithful service to his country, the victim of James's private enmity, and of England's commercial jealousy. No sooner had the Dutch basely sacrificed this great man and minister, than James renewed his pretensions upon the seas and fisheries, and wrote to them, "that if they persisted in denying his rights, he would not only drive them off the sea, but deprive them of their republic also;" a threat, that, however willing, James was unable to put into execution.

In 1651, however, Cromwell really became formidable to their welfare. To destroy their carrying trade, and at the same time to raise the navy of England, he framed the celebrated navigation act....the most perfect system of monopoly yet devised. Still jealous of their India trade and fisheries, and unwilling to resort to force in the first instance, to deprive the Dutch of both, he proposed a *union of England and Holland*, alleging as motives for it the necessity of defending religion, and the certainty that they could, if united, secure the commerce of the whole world to themselves. The Dutch, however, rejected the proposal, and so mortified Cromwell, that he sent them word...." that he would permit no flag but that of England to appear on the ocean, the sovereignty of which had been acquired, and would be retained, by the sword." Accordingly, without any declaration of war, all the Dutch vessels met with were immediately captured; and, in his instructions to his admiral Blake, Cromwell told him, "to drive the frogs back to their marshes." Several naval actions followed, as desperately fought as any ever witnessed; in one battle the Dutch triumphed, four

were drawn battles, and the two last were in favor of the English, who dictated the terms of the peace, which followed in 1654. Yet it was in these adverse circumstances, that the Dutch refused to grant any right to search their ships.

In 1661, Charles II. pursued the policy and projects of Cromwell: he fitted out a powerful naval force, and in the moment of peace seized the Cape de Verd islands, the Dutch fleets on the coast of Guinea, and all the merchantmen in English ports or found at sea. Holland protested against this breach of all laws and treaties, and denying the purity of English courts, proposed to refer the subject to the determination of any neutral power; but the proposal was rejected and war declared. Charles alleged in excuse for his conduct, the denial of his rights to the sovereignty of the seas, and in parliament his ministers declared that Holland must be destroyed, if England hoped to secure the trade to India. The Dutch having ably maintained their rights at sea, and having even laid several towns on the English coast under contribution, Charles consented to conclude a peace, in 1672. As soon as the Dutch were lulled into a belief of security, Charles sent another fleet to sea, before a declaration of war, to destroy the Smyrna trade, and secret emissaries to set fire to the magazines, arsenal, and India house at Vlie, in Holland: both projects, however, failed, and war was declared. To render the ruin of Holland certain, Lewis XIV. was prevailed upon to join England. In these circumstances, the Dutch were reduced to extremities, and by the intrigues of the prince of Orange, Charles's nephew, they were induced to sacrifice the De Witts, as they had before sacrificed Barneveldt; they then obtained an ignominious peace with England, but at the instance of the prince of Orange, the war was continued with France. Sir Wm. Temple, English minister at the Hague, and sir John Dalrymple, both acknowlege that England interfered to prevent a peace between France and Holland, in order that the English might profit by the weakness of both: in 1678, however, peace took place, and the Dutch became little better than colonists of the English. When the prince of Orange became king of England, in 1689, they joined in a war against France, which continued until 1697, and in all the subsequent wars until that of 1780, so fatal an influence was retained by the British as to involve them in debt and disgrace.

A particular instance of hostility and jealousy was remarked in one of these wars: the British refused to permit the Dutch to furnish more than one-third of the marine force, and obliged them to furnish two-thirds of the land force. By these and other such schemes, the navy of England was raised upon the ruins of that of the Dutch, whose interests were constantly sacrificed in their treaties with other powers. So steadily was this policy pursued, that from being potent rivals, the Dutch became as

abject as the Portuguese....their possessions in India were plundered and seized, and their already crippled trade in Europe became a prey not only to every power, with which England engaged in war, but to the Algerines, who were engaged to despoil the wrecks of a commerce once so flourishing and great.

Under all these misfortunes, the Dutch national character retained some portion of its ancient faculty for industry; and a few years of peace gave new life to their enterprize; but, like other nations of the present time, they vainly hoped by an honest neutrality in the war of 1755, to recover a portion at least of their former consequence. At this time, a treaty (that of 1668) was in force between England and Holland, the 8th and 9th articles of which, in particular, stipulated, that English ships should not approach within cannon shot of Dutch vessels, should send but two or three men on board "to see their passes," and should not detain the vessel unless laden with contraband. The war had scarcely commenced, however, when the English detained all the Dutch merchantmen, they found engaged in a carrying trade of innocent goods; and they condemned them under what has ever since been called the rule of '56....an outrage, that had scarcely a parallel or precedent, in enormity, among civilized states. From this blow the Dutch never after recovered, and it may well be questioned, whether they suffered more from the hostility of the English in war, than from their perfidy in peace.

The same causes which excited the enmity of England against the Dutch, created an hostility to every other maritime power; our own maritime industry, our extent and rapidity of commercial intercourse, our facilities and cheapness of trade, provoked those outrages and insults, against which we had no successful means of relief, but in checking our prosperity, and if this should fail, we can hope for no redress but in war.

March 7, 1809.

LETTER XI.

ALTHOUGH the remarks which I offered in my last letter, respecting the conduct of Britain to the Dutch, afford but a faint idea of the policy of its government, I would not resort to a further inquiry, if the peculiar state of our foreign relations, and the clamor of the advocates of England, did not invite it. It is a most instructive investigation; we see in it at every step, the very same jealousy, envy, rapacity, and corruption; we see the same efforts made to destroy the best men, the fathers of our liberties; the glory of our country; the same insolence, the same perfidy. In the present letter, therefore, several instances will be

noted, of the maritime tyranny and oppression, towards other states, particularly France, which have terminated in almost realising the threat of Cromwell, that no flag but that of England, should appear on the ocean.

The wars between England and France, originated in the Norman conquest, in 1066, and in the claims of the former, to the sovereignty of the seas surrounding its islands....Possessing an important part of France, and favored by the turbulent dukes who held fiefs under its throne, the ambition of the Norman-English was excited to become masters of the whole nation. To attain this purpose, fourteen wars were carried on against France, before the real object was avowed. In 1327, Edward III. assumed the title of king of France. At this time little or no commerce was carried on, either by the English or French; the Dutch and the people of the Hanse-towns, were the carriers of such trade as these states could furnish. One of the first acts of Edward, was to forbid all trade or communication whatever with France, with the avowed object of reducing it by famine; and such vessels, as were taken on their voyage to France, were ordered to be destroyed.....Some idea may be formed of the weakness of France at this period, from the circumstance, that the English possessed above a third part of its then territory, including the ports of Calais, Cherbourg, Brest, Bordeaux, and Bayonne.

In the interval, from 1327 to 1569, the French recovered several of their seaports, and even a maritime ascendancy; while the character of the English became decidedly commercial. The connection formed between England and Spain, in 1554, created a lust of wealth, that stimulated the former to engage in wars for its gratification. The colonies and ships of Spain, were plundered in time of peace, in the reign of Elizabeth, and all trade and intercourse whatever, forbidden with that country: in the port of Lisbon, 60 vessels belonging to the Hanse-towns, were seized and condemned, and the vessels of all other neutral states, met on their way to Spain, were treated in the same manner. With the increase of commerce, the animosity of England against France, acquired additional strength; Elizabeth stirred up a continental and a civil war, to check the maritime progress of that country, and in consideration of the assistance she gave to one of the factions in France, obtained the ports of Havre and Dieppe.

In 1604, Henry IV. sent the duke of Sully to England, to compliment James I. on his accession to the throne. The vessel carrying Sully, was met at sea by an English cruizer, which demanded the salute....this was no sooner refused by the French, than a broadside was fired into their vessel. Sully then ordered the flag to be struck, and, when the English captain came on board, complained of the outrage....his answer was, that he had

instructions to compel every foreign vessel he met, to give the honors due the sovereign of the seas.

In 1625, during the war with Spain, Charles I. ordered all the French vessels carrying Spanish goods to be seized. In 1640, the French, being at war with Spain, retaliated, and in answer to the remonstrances of England, pleaded in excuse, the precedent of 1625.

In 1655, Cromwell dispatched a fleet, in time of peace, to attack the Spanish colonies and intercept the galleons: the Spanish minister, becoming acquainted with the circumstance, asked an explanation, and Cromwell replied that his object was to abolish the inquisition and compel Spain to abandon her monopoly....the absurdity of this excuse was only equalled by the iniquity of the act itself. The colonies and the ships of Spain were surprised and taken, and the plunder carried in triumph through London.

In 1689, the English attacked the colonies and commerce of France, in time of peace, and for the second time introduced the plan for starving that country: so little respect was entertained for the opinion of the world, or the laws of nations, that the execution of this scheme was formally stipulated and agreed upon in a treaty with Holland; the second article declares:

"It is agreed, between his majesty the king of Great Britain and the lords of the states general, that if during the present war, the subjects of any king or state, shall undertake to traffic, or have any commerce with the subjects of France; or, if their vessels, laden with any wares or merchandize whatever, are met in their passage to France, they shall be attacked and taken by the men of war and privateers of the contracting parties, and condemned as lawful prizes."

In 1701, the English and Dutch entered into a partition treaty against Spain. In this they bound themselves not to make peace with Spain, until security should be given that France should not receive any of the Spanish colonies, or even carry on any commerce whatever with them.

The 16th article of the same treaty says: "it shall be lawful for the king of Great Britain and the lords of the states general, in order that the commerce of their subjects may be extended, to seize all the lands and cities they can, in the Spanish colonies, and whatever they may take shall be their own."

In 1718, the English attacked and destroyed in time of peace, the French fisheries on the coast of Canada, and plundered the defenceless towns of the Spaniards in South America.

In 1720, jealous of the Ostend East India company, the English intercepted and plundered their ships....and in the same year they sailed into the Baltic, and behaved so insolently, that Russia and Austria entered into an alliance, for the protection of their trade.

In 1721, the Spanish colonies and galleons were again attacked, during peace.

In 1726-7, the Spanish government complained of the enormous abuses and outrages committed by British smugglers, on the coasts of South America: and it *asked permission to search all British vessels* found on those coasts: the ministry promised redress, but refused to permit a search*....an attempt was made to restrain the abuses complained of, but it created such a clamor in England, that the ministry were driven into a war to sustain the piracies and smuggling. Some of the pirates themselves, that had been punished by the Spaniards, were permitted, even before the house of commons, to excite the enmity of the nation, in order to give a color to their depredations. A writer *(examination of the opposition to the treaty of Pardo)* noticing this subject, says...." If all the depredations committed by our people in the American seas, were known: the nation would be astonished at having given birth to such a number of villains, who have grossly violated the most sacred laws of nations."

The trade of the Ostend company being in a prosperous condition, notwithstanding the opposition it experienced on the ocean and in India, the British ministry involved Austria in a disastrous war. Peace was granted, but on a condition, which proved the object of the war....Austria was compelled to sign the treaty of Vienna of 1731, which stipulated, that " the commerce between the Austrian Netherlands and the East Indies, should cease forever."

The efforts of the French, to open an India trade, were wholly frustrated, for above half a century. It was not until 1720, that they obtained a settlement at Pondicherry, which they, with difficulty, preserved in the war of 1744. Their success, however, became very great, after the peace of 1748, and hastened the ruin, which their envious neighbors were concerting.

As soon as the peace of Aix la Chapelle was concluded, in 1748, the French abandoned their marine, and entered into commercial speculations with unprecedented activity; their trade flourished, and in 1755, no less than 25 Indiamen sailed from L'Orient.....The English, on the contrary, began to prepare for a new war, as soon as that of 1748 had closed; their fleets were put in complete repair and readiness for sea, and every other arrangement made for vigorous measures.....The object of such preparation was unknown, until the close of 1755, when the French colonies, fisheries, and merchantmen were suddenly attacked, in a moment of peace and confidence. No declaration of war appeared until 1756, but the English fleets had sailed in April, May, and August, 1755. The consequences were necessarily most fatal to the French, above 300 merchantmen were

* See lord Chatham's speech in the appendix

seized, and between 7 and 8000 persons, chiefly seamen, were cast into English prisons.

This perfidious conduct is the more remarkable, as besides the ordinary obligations of justice and custom, the existing treaties required that a declaration of war should precede hostility, and that the property and persons of either party should not be molested in the harbors of the other, but an opportunity afforded to leave the country in case of war. The French, with a magnanimity that has always placed them in the consideration of mankind, above their jealous neighbors, scrupulously adhered to the stipulations of treaties, and to good faith; they sent to England the vessels and seamen of that nation, although found in their ports, even after they had learned their own disasters and the detention of their own seamen.

The French demanded peace in 1761, and restitution of their property plundered before the war, but the British had the indecency to answer, that the claim for property seized before the war, was unwarranted by the laws and practice of nations, and that war commenced on the first aggression, and not when a declaration appeared. The object of the war, and of this refusal was made known by lord Chatham, who did not hesitate to declare in the house of lords, that "France should not obtain "peace, unless she signed the destruction of her marine; that "it was enough, if the coasting trade was allowed her; and, that "England should reserve to itself the sovereignty of the ocean." And, if further proof were necessary, it was given in the house of commons, during the war of our revolution....Mr. Adam said "the success of the last war was the effect of a bold measure adopted by the former administration, who, before war was declared against France, seized all her merchant ships, and by taking her seamen rendered it impossible for her to equip her fleets:.....a stroke from which that nation did not recover, during the continuance of hostilities." *Smollet*, vol. III, p. 442, speaking of the refusal to restore the plundered property, says, the ministry made no secret of their issuing the orders for capture before the war.

In the war of our revolution, if the English did not fully pursue their usual policy, it was because their resources were drained, and the continental powers, instead of leaguing with her, shewed a due sense of her shameless disregard of all rights. The British plundered neutrals, and seized, contrary to the practice of nations, all the French fisheries they could surprize. On these points, the conduct of France again afforded an honorable contrast: instead of retaliating, the French ministry sent special orders to their cruizers, directing "from humanity, and in consideration of those who have no other means of subsistence than commerce and fishing, the commanders of French vessels are forbidden to disturb or stop the vessels of English fishermen;" and, in relation to neutral trade, France proposed,

in 1778, to exempt from capture all merchantmen whatever laden with innocent goods; the English answered, that Britain could do without neutrals, and would continue to capture them.

When these traits in the character of both nations are considered, who can wonder at the armed neutrality that followed the execution of this threat? And is it not a matter of astonishment, that the states of the continent did not again unite against England, until after an experience of fourteen years' further perfidy, and contempt of the rights of nations? The opinion, that necessarily follows a perusal of these instances of bad faith, cannot be better expressed than in the language of *Azuni*, a celebrated writer on maritime law:

"England has always felicitated herself on her superiority at sea; but how shamefully has it been acquired; by the violation of the sacred principles of the laws of nations; by ruining the commerce of every nation, and by keeping so many French seamen to perish in her prisons. If the British government desires to disturb the peace of the world, it calculates chances, it watches the moment when perfect security induces the citizens of other countries to engage in commercial speculations and to excite their maritime industry....it then commences war; hostilities precede any declaration and the seamen become its prey."

Such, in fact, is a faithful picture of the British government. For about three centuries, it has had but one object, which it has now at length obtained....no commerce but its own is safe on the ocean. The states of Europe have been alternately corrupted and betrayed by it; their substance has been drained, the flower of their youth cut off, their growth stunted, and their industry destroyed....for no other end, but that Britons alone should be the carriers of commerce, that Britons alone should supply the world with manufactures!* And, under what frivolous pretences, have they been thus duped into ruin and disgrace:

Elizabeth pretended, that the world was in danger of being overwhelmed by the Spanish armada: yet she drove every neutral flag from the ocean.

Cromwell, that the true faith was in danger....yet he was the most faithless of men.

Charles II. that Holland was avaricious....yet he sold every thing he could acquire, and was himself a pensioner of France.

William III. who was himself the usurper of the throne of his wife's father, and who had fomented a war in flanders, declared, that Europe wanted repose....yet proposed to starve France.

Queen Anne and her successors....new pretexts for every war, and all of them equally absurd.

* See appendix....B.

England has constantly clamored respecting the ambition or usurpations of those, whom she wished to weaken and destroy, but has never relaxed in her own system of universal monopoly, or ceased to aggrandize herself by the enslavement of fifty millions of Asiatics. She did not oppose the usurpations of Prussia, because the Hanse-towns being the first victims, a commercial rival was removed. She did not oppose the attempts of Russia to reduce Sweden and Denmark, because their ruin would open the Baltic. She did not oppose the dismemberment of Poland, because as the price of her acquiescence she obtained commercial privileges from Russia and Prussia; and she plotted the dismemberment of France, because by the extinction of feudal subjection, by the release of the human faculties from the heavy weight of monastic, privileged orders, and a jarring and vexatious jurisprudence, all its natural capacity was set loose; and because even under all the pre-existing disadvantages, the force of nature in a great measure triumphed over slavish institution, and its resources and genius enabled it after every war, to threaten a rivalry of trade and manufactures.

No one can reflect upon the enormous and unnatural power of a state composed of but fifteen millions of people, producing very little of the materials of its own manufactures; and pretend that it is the result of their peculiar advantages, spirit, or industry. It is the necessary effect of an early and uniform system....England has not engaged in wars with states, that have had no commerce; Austria, Prussia, and Russia, have been her allies and the objects of her regard, because neither of them could approach a rivalry, and because all of them were necessary to check the enterprize and industry of France and Holland.

It is as fortunate for states, as it is certain, that the period approaches, when this proud and insolent people must take, among the nations of the earth, that secondary, or at the utmost that equal station, which alone they have a claim to fill....an event that all neutral powers must hail as a propitious era in human affairs.

March 9, 1809.

LETTER XII.

IN my two last letters, I presented several prominent instances, in the conduct of Britain, prior to our revolution, to shew the nature and uniformity of that policy, which has placed in her hands the monopoly of trade. The next inquiry that I am to make, relates to our own maritime concerns, and to the proper object for those hostilities, which the public at large now deem inevitable. I say the proper object, since all parties de-

clare that we have more cause to complain of one belligerent than of the other; since policy and justice command us to select that power which has injured us most; and since by resisting one, we remove the difficulties in which we are placed with the other.

As I propose to shew that, on every account, England is the proper object for our resentment, in the first place I will notice the pretexts, urged by its partisans, in favor of an opposite course of conduct.

If, my friends, we are to be guided, in our relations with France and Britain, by the general character of each; if we are to be inimical or friendly to either, in proportion as it has respected the rights of neutrals, in former wars, and our own in the present one; if, in short, we are to accept the challenge of the advocates of England, and engage in war with the earliest aggressor....why do not those advocates lay before you the evidence of Britain's good faith and respect for neutrals? and where are the proofs, that France has at any time been as hostile to neutrals, as her opponent? When those advocates avow that the earliest aggressor demands earliest hostility, when so important a point is at issue, you may be assured that the best possible evidence is adduced to prove that France should be the object of enmity: what, then, is the evidence? Instead of classing and enumerating the outrages of both belligerents, they tell you that France is ambitious;....instead of presenting a faithful view of the conduct of each, they tell you, that the British navy is the bulwark of your liberties;....they mutilate and pervert well known historical facts, to create a belief that France was the earliest aggressor; and close their pretended proofs by declaring that France guides our councils.

Such being the nature and extent of the evidence in favor of England, there would seem to be no necessity for offering a fair statement of the case; the more especially as the subject has been so often noticed: but, in circumstances of so much importance, there cannot be too much discussion; and it may be useful to expose even this inadequate defence.

If you had heard France reviled only within a few years; if the clamor, raised against that nation, had originated when it had vanquished its invaders and turned its energies against them....you might be disposed to believe it sincere. If the men, who now represent the ambition and power of France as awful and portending ruin to your country, had been the advocates of France in her distress; if they had condemned the dismemberment of Poland, and the coalitions of Pavia and Pilnitz for the dismemberment of France....I would endeavor to believe their apprehensions really exist. But, my friends, how different was their conduct: when France struggled for an existence, when it had no ambition but to "assimilate its goverment to your own," when it had no army but undisciplined conscripts,

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when Bonaparte was an obscure subaltern, and when France applied to your country for flour to preserve its people from famine; the same faction reviled it, that reviles it now....the very men, who now express so many fears for the freedom of nations, applauded every despotic measure undertaken at the instance of England. Away, then, with the detestable hypocrisy, that would conceal under an affected dread of Bonaparte, an inveterate anglo-commercial hatred of France.....The advocates of Britain are afraid that her monopoly, and not your liberties, will fall before the energies of France; their Diana is in danger and as faithful votaries they wish to avert it, by employing your resources, by involving you in their contest.

As unfortunate and as absurd is the pretence that your safety depends upon the navy of England. If its power had ever been employed to prevent weak states from being ruined; if it had interposed to save Sweden, Denmark, or Turkey from the ambition of Russia, or the Hanse-towns from the usurpation of Prussia; if it had checked the Barbary pirates, or been employed to prevent the partition of Poland....you might be induced to confide in it. But, as the British navy has never fought, but in an inglorious cause, and as it has never ceased to persecute neutral and weak states; you must smile at the credulity that could suppose you capable of such folly as to rest your hopes upon such a basis. The insults and wrongs, that your country has sustained, from the naval power of Britain, have been too long and severely felt, to create in your minds any other impressions than those of hatred and alarm....its tyranny and ambition are not like those of France, in relation to your country, chimerical or a theme for idle prediction; they have long been, they are now, experienced by every class in our community.

Preposterous as those pretexts are, they are surpassed in absurdity by the insinuation, that France has an influence in our councils. If the falsity of it, is not already established by the long and abject endurance of every insult and injury that Britain could possibly exercise; if forbearance, even when the advocates of England themselves dared not deny the justice of war, did not silence the slander about French dictation....I ask you to review the proceedings of the congress, that has just closed its session: in these, you will find a humiliating evidence, that, if any foreign influence prevails in our country, it is that of England. When the measure of our wrongs was full, in 1807-8, an embargo was laid preparatory to war: but in 1808-9, the embargo was raised, although redress was contumeliously refused....did this evince French influence? As a substitute for the embargo or war, a non-intercourse act was passed, and what is its character? Does it merely continue the restraints existing against France in 1807-8, and those against England imposed subsequent to the affair of the Chesapeake? Far from it....this act imposes more oppressive restraints upon France than those

of 1807-8, although no new cause of complaint existed; and, although England has given new cause of complaint, the restraints of 1807-8 have been materially removed in her favor. Is this the way in which French influence would be exercised, if it had an existence? Be assured, my friends, the influence which encourages Britain to trample on our rights abroad, has driven your country from decisive conduct at home; and, that it is that influence, which, under every administration, has produced lenient measures towards England, and harsh measures towards France.

I have thus briefly, but perhaps sufficiently, noticed the pretexts, that are employed to persuade you, that England was not the earliest or greatest violator of your country's rights. In my next letter, I will expose the perversions, of historical facts, that have been boldly imposed upon the public; and in the present one, inquire....*whether France or England had the greatest interest to avoid injuring us, at the commencement of the war, in* 1793?

It must be evident, in the first place, from a general view of the character of each state, that England considers it to be her interest to repress or destroy the commercial efforts of other states, and in this the destruction of neutral trade....because her views have for three centuries been directed to a monopoly; because her colonial and manufacturing systems render a monopoly of trade necessary to their prosperity; because the extent of her European territories render agricultural pursuits inadequate to her population and their demands; because her marine and commerce have been almost uniformly successful; and because France is benefited by a neutral trade.

France, on the contrary, is interested in the prosperity of general and neutral commerce; because she is a large producing as well as manufacturing state; because her character ever has been, and probably will long continue to be, agricultural more than commercial; because her manufactures and colonies do not afford her an adequate interest, it would be impracticable to attain it; and because the success of neutrals must weaken England, and deprive it of the means of annoying not only France, but all commercial states.

Such having been at all times, the obvious motives of those powerful states; and more particularly at the era of the French revolution; the state of our relations with both countries, prior to that event, merits consideration.

At the close of our revolutionary war, the French had every reason to expect, and every motive for perpetuating, the most cordial friendship: the gratitude of the people and condition of the country, opened a vast field for their enterprize, and they had every prospect of being able to lay the foundation of a prosperous commercial and manufacturing intercourse. But their government, either ignorant of its true policy, or afraid

of the examples of our free government, neither exerted itself to maintain an active correspondence with the country nor to cherish a commerce, that only wanted governmental patronage. In fact, France refuted by her conduct after the war, the calumnies that attributed her engaging in it solely to interested motives.

The conduct of England was strikingly opposite....when peace was made, she resorted to concealed means, by which to retrieve what she had lost in war; the success of her policy in destroying the internal industry of Portugal, and the external commerce of Holland, pointed out those means; she had two objects to attain;....to monopolize the supply of European manufactures and the purchase of our produce; and to acquire a political influence in our councils: 1st. To aid her own commercial views: 2d. To punish France for assisting us in the revolution: 3d. For annihilating our form of government or assimilating it to its own. Instead of avoiding, like France, an intimate connexion, Britain exercised all her energies to produce an oblivion of the past, and to make our resources subservient to her interests. Those views were facilitated by the identity of language, habits, and prejudices; by the influx of English books and newspapers only; and by the ability to supply, and give credit for manufactures. Britain also took care to appoint as her consuls, natives of the country, who having betrayed its cause, had the local knowlege, the ability, and inclination to perform all the services required of them.

Such was the state of the relations, or rather of the views of France and England, in the year 1789, when the revolution commenced. France held no influence in these states, but the gratitude of the people; it had no advantages but those of treaties, granted, as tokens of that gratitude, during our revolution. England held a great commercial influence; the duties on importation of foreign goods being artfully appropriated for the payment of the public debt, its holders were the friends of that country, which could supply the greatest quantity and on the readiest terms; and the great body of the merchants were British partizans for the same reasons.

If, my friends, the French, in 1792, were powerful by land and sea; if their finances were prosperous and their trade flourishing; they might have disregarded the advantages of the friendship of America: but, impoverished at home, and vanquished abroad, without a single advocate or friend in Europe....what must have been, what was their obvious interest, in relation to America? Was it to retain her friendship, or to add her to the long list of enemies? Did not every motive of prudence and policy demand, an abandonment of the conduct pursued by Louis XVI. and every exertion to retain the good will of this country? If this, in ordinary circumstances, was evidently the only correct policy; its necessity was evinced by the nature of the stipulations of existing treaties. By the treaty of 1778, America

guaranteed to France her American possessions; and by the same treaty, French ships of war and privateers possessed an exclusive privilege of carrying their prizes into American ports; these and other important advantages possessed by France, at a time when their value was inestimable, made it the first wish and best interest of that nation to maintain the closest friendship with these states, and respect for their rights. And as if the ties of reciprocal good will were not already sufficiently strong, France had scarcely declared her independence, when she opened the ports of the mother country and of the colonies, to American vessels, and placed them as to duties on a footing with French ships.

On the other hand, the motives that induced Britain to engage in the coalition against France, rendered the reduction of America an object of her ardent desire and expectation: the stipulations of our treaty with France, the advantages that our friendship offered that nation, the similarity of condition as to free government, the benefits of a neutral trade to France, all combined to induce Britain to involve us in war on her side, or to render our neutrality useless to ourselves or France. England was interested, besides, in our injury, because we had, after conquering her on land, advanced to a commercial rivalry. As no treaty existed, to be a bar to her encroachments, she did not hesitate to put in force her insidious intentions, and to attack France through an inoffensive neutral; possessing a vast influence in our councils and holding us as tributaries rather than customers for her manufactures, she did not permit herself to anticipate any resistance on our part....and her predictions have been but too faithfully realized.

Such, my friends, were the respective conditions and interests of France and England; and, you will find in their conduct the most ample evidence of the correctness of my description.

March 16, 1809.

LETTER XIII.

I TRUST, my friends, that in my last letter, I proved to your satisfaction, that, in 1792, France was materially interested and anxious for the welfare of neutrals, and particularly of America....since the preservation of her people from famine depended upon neutral supplies, and since her treaty with America guaranteed privileges essential to her safety and commerce.

It must have been equally evident, that England was interested in the suppression of American neutrality in particular,

for the very reasons that made it the wish of France to respect our neutrality.

If any doubt yet remains on your minds, that this was the case, I will remove it, by informing you, that, France proposed in a formal manner to the court of London, to respect neutral flags in all cases but those of *contraband* and *actual blockade*, and that the proposal was indignantly refused.* The evidence, that I have yet to lay before you, will be equally emphatic.

I now proceed to the question:....

Was France or England the first aggressor?

You are to bear in mind that, the advocates of Britain, avow that the first aggressor is the proper object for resentment: and that, relying upon your supposed ignorance, they pretend that France was the first aggressor, and demand war against that nation. You are also to remark the *manner* in which this avowal is made, and the *evidence* that is adduced to prove France the first aggressor. Passing unnoticed the host of hireling printers, I take the highest authority in these states, in the estimation of England's friends, the Essex junto. In their late official report to the legislature of Massachusetts *a war is recommended against France*, because, as they say, it was the first aggressor, and their proof is this...." The French authorised the capture of neutrals, laden with neutral provisions, but bound to enemy's ports, on the 9th of May, 1793, one month prior to the British decree for the same purpose."

Here, then, you are told, that *the first French aggression* was on the 9th May, 1793. Now, if it shall be shewn that Britain had aggressed prior to that date, and that the French decree of May, 1793, was a *retaliation for an earlier act of Britain* (and by the way the Essex junto assert *that retaliation cannot be complained of*) it must follow, according to the position of the British advocates, that, as soon as congress shall meet in its next session, it should declare war against England. This will be the obvious conclusion, and the necessary course of proceeding.

That I may establish the point, beyond the possibility of doubt or misconception, I ask your attention in the first place

* The French government made every exertion, in 1792-3, to induce Britain to remain neutral. In one of the letters of M. Chauvelin to lord Grenville, dated July 25, 1793, the following remarkable proposal was made; it is scarcely necessary to add, that it was haughtily rejected by the British ministry:

"To give to the navigation, maritime commerce, and goods of individuals, the same protection and the same liberty, which the laws of nations and the universal consent of the nations of Europe, give to the intercourse and property of individuals on land: to suppress, in a word, that pernicious custom, which during the quarrels of states and princes, interrupts in every sea, the most necessary intercourse, defeats those speculations, on which the existence of people, strangers to those contests, often depends; which suspends the progress of human discoveries; which arms individuals against each other; delivers the property of the peaceful merchant to pillage, and devotes to death the mariner who attempts to defend it." Such is the honorable object of the proposition of France to his Britannic majesty.

to a brief review of events, the greater number of which occurred prior to May, 1793. The question is not dependent upon reasoning; it rests upon a train of facts, collected from English as well as American state papers, all connected with the subject, and giving force to the discussion that will follow. Fifteen years ago, such a review would have been unnecessary, but many of you have since that time, by years reached the class of citizens, should learn to be able to decide in political questions, and should therefore have every information.

On the 6th June, 1789, the French revolution commenced. In July and August, 1792, the conventions of Pavia and Pilnitz were signed: their objects were not merely the overthrow of a free government in France; they extended to the partition of two thirds of France and all her colonies, to the suppression of the electoral states of the German empire, particularly Bavaria, and to the final dismemberment of Poland.

Austria, Prussia, Sweden, Spain, and Naples signed this convention in 1792, and between August, 1792, and March, 1793, Russia, Holland, Portugal, and England acceded. Thus all the great states of Europe, nearly all its physical force, combined against France singly. But this did not satisfy the coalition, it was determined in order to conquer France, *that there should be no neutrals;* and in this measure England embarked with the greatest vigor, bullying such states as could not be purchased, and making the determination of the coalition subservient to her own interests.

In April, 1793, England agreed to pay Sardinia 100,000 dollars per annum, for entering into the war. In the same year, it agreed to pay annually to the elector of Hesse Cassel 225,000 crowns, and to keep in pay 8000 Hessian troops besides. In the same year, it agreed to subsidize Hesse Darmstadt and Baden, in the same manner.

The only states that remained neutral, therefore, were Denmark, Switzerland, Genoa, Venice, Tuscany, and America.... the means taken to involve them in a war are now to be noticed.

Russia, Prussia, and Austria, in 1792, demanded that Denmark should abandon its neutrality; the answer given was, "his Danish majesty cannot join the concert of powers, in conformity with the rules of government, which are proper for him."

Upon the death of Gustavus III. in 1792, Sweden abandoned the coalition. A demand was therefore made, that it should again become a party: the regent answered in May, 1793, "Sweden is resolved invariably to maintain, during the existing war, a strict neutrality, towards the coalesced powers as well as towards France."

In November, 1793, the British minister, Fitzgerald, called upon and required Switzerland to join the confederacy; it answered, "accustomed to observe our treaties, we cannot depart, under any pretext, from the neutrality we have declared."

In 1793, the British minister, Drake, announced to Genoa, that "in the present war, against the usurpers of power in France, *no government can declare itself neutral without becoming an accomplice.*" Genoa refusing to join the coalition, a British man of war entered its port, attacked therein a French ship, and killed above 40 of its men. France announced, that notwithstanding this event, it would respect the neutrality of Genoa, knowing that it could not have prevented this British outrage upon its rights.

To a demand of the same kind made by England, in September, 1792, Venice declared it would remain neutral, "since it could add no weight to the coalition, and by a war would run the risk of propagating (what in complacence to England it called) the pernicious principles of Gallic madness."

The British minister at Florence, lord Hervey, informed the grand duke of Tuscany that *his neutrality would not be allowed*, longer than his aid was unnecessary: the French ambassador, La Flotte, was driven out of Florence shortly after, upon peremptory demand of the British ambassador, and in October, 1793, Tuscany was forced to declare war.

There is every reason to believe, that the British minister, Hammond, applied to our government, to abandon its treaty with France; the answer is unknown, but although neutrality was avowed, the measures of our government for a time directly favored the views of the coalition.....as I shall endeavor to shew hereafter.

I have given this view to shew you, my friends, the systematic measures taken, particularly by England, *to drive every state from neutrality, in order to famish and conquer France.* It is important that this object and the means taken to attain it should be remembered. It is now to be shewn, in what way the coalition powers were determined *to destroy the commerce* of such states, as by their neutrality could benefit themselves or aid France.

In November, 1792, *three months* before the declaration of war by France, the English ministry directed the detention of all vessels, in the ports of Britain and bound for France with provisions....including in their order as well French vessels as those of neutrals.

In January, 1793, the Prussians took possession of the Hanse-towns: French and neutral vessels, to escape seizure, left the ports, but had scarcely reached the sea, when they were detained and sent into England.

These violations of the laws of nations, of treaties, and of neutral rights, were committed, when England was in a declared state of neutrality and peace with France; and whilst a French minister was in London, begging the ministry to remain at peace, and to permit the exportation of provisions to keep his countrymen from starving. So atrocious, indeed, were these acts, that the British ministry were compelled

to take refuge under *an act of indemnity*, passed in June, 1793, to escape impeachment and punishment. Alluding to those outrages, in a debate in the house of commons, January, 1793, Charles Fox said, " the prohibition to allow the exportation of provisions to France, whilst they are allowed to be exported to any other country, is an act of hostility so severe, as can have no excuse or justification but in hostile acts of France, and it is not even pretended that such hostile acts have taken place."

The British annual Register, for 1793-4-5, declares that, it was the object of the English ministry, to compel all neutral states to join in the war against France ; and that the orders against commerce had that object principally in view.

You will remark, that England had a stable, permanent goverment, and ample resources, whilst France was in a state of anarchy, and had as many rulers, as there were months, in the first years of her revolution. On the acts of the one, therefore, we can look with no indulgence ; whilst it should excite no surprize if there were causes to complain of the other. These considerations among others, exhibit a striking contrast *in favor of France*, when it is known that the aggressors against *her* were also the earliest aggressors against neutrals.

I will now lay before you, further evidence, that England, whilst in peace, plotted the destruction of neutral commerce. In September, 1792, the British minister in Russia, agreed with the ministry of that power, upon a treaty binding the contracting parties *to interrupt neutral commerce with France*:* this treaty was *formally ratified* nearly *two months prior to the French decree*, which is said by the servile supporters and retainers of England, to be the first act of aggression : similar treaties were made with other powers ; and as extracts from them will be satisfactory I subjoin them.....The opposite column contains the French decree of May, 1793, which, if no other evidence existed, would be sufficient to prove that it was *an act of retaliation only*.

EXTRACT,

From a convention, between his Britannic majesty and the empress of Russia, definitively signed at London, March 25, 1793.

Art. III. Their said majesties, reciprocally engage to shut all their ports, against French ships, not to permit the exportation, in any case, from their said ports, for France, of any military or naval stores, or corn, grain, salt meat, or other provisions ; and to take all other means in their power for injuring the commerce of France, and for bringing

First French decree, of May 9, 1793.

" The national convention, after having heard the report of their marine committees, considering that the flag of neutral powers is not respected by the enemies of France ; that two cargoes of flour, arrived at Falmouth, in American vessels, and purchased before the war for the service of the marine of France, have been detained in England, by the government, who would not pay for them, except at a price below that at which flour had been sold.

" That the ship John, capt. Shock-

* See Appendix....C.

her by such means, to just conditions of peace.

Art. IV. Their majesties engage to unite all their efforts to prevent other powers, not implicated in this war, from giving on this occasion, of common concern to all civilized states, any protection whatever, directly or indirectly, in consequence of their neutrality, to the commerce or property of the French, on the sea or in the ports of France.

EXTRACT,

From a treaty, between his Britannic majesty and the king of Spain, signed at Aranjuez, May 25, 1793.

Art. IV. (Precisely the same as article III. in the above.)

Art. V. Their majesties also engage, the present war being generally interesting to every civilized state, to unite all their efforts, in order to prevent those powers, which do not take part in said war, from affording, in consequence of their neutrality, any protection, direct or indirect, on the sea or in the ports of France, to the commerce or property of the French.

On the 30th of August, 1793, a treaty, containing the like stipulations, was signed in London, by the ministers of England and Austria. And on the 14th of July, 1793, another treaty, of the like character, was signed between England and Prussia.

The British ministry acted upon the above treaties, as I have before shewn, prior to their war with France; it was not, however, until the 8th of June, that their specific orders appeared; these instructed the men of war and privateers, to intercept all trade whatever with France; and for the first time, declared, that the notification in a neutral country, of a blockade of an enemy's port, subjected the vessel of that neutral state to capture, if found on the sea, proceeding to such port, although there should be no actual blockade.

ley, laden with near 6000 kentals of American wheat, bound from Falmouth to St. Malo, has been taken by an English frigate, and sent into Guernsey, where the agents of government have simply promised to pay the value of the cargo, because it was not on account of the French.

(Other instances stated, are here omitted.)

"That the divers reports, which are successively made by the maritime cities of the republic, announce that similar acts of inhumanity and injustice, are daily multiplied and repeated with impunity throughout the seas.

"That under such circumstances, all the rights of nations being violated, the French people are no longer permitted to fulfil, towards the neutral powers in general, the vows which they have so often manifested, and which they will constantly make, for the full and entire liberty of commerce and navigation; decree as follows:

"Art. I. The French ships of war and privateers, may arrest and bring into the ports of the republic, the neutral vessels which shall be laden, wholly or in part, either with provisions belonging to neutral nations, and destined for an enemy's port, or with merchandize belonging to an enemy.

"II. Merchandize of an enemy shall be confiscated to the profit of the captors; provisions belonging to a neutral, and bound to an enemy's port, shall be paid for according to their value, in the place to which they were destined.

"III. Neutral vessels shall be released, as soon as the unlading shall be effected. The freight stipulated by the shipper, shall be paid; and just indemnification shall be allowed, in proportion to their detention.

"IV. An inventory of such cargoes shall be sent to the minister of marine, and another to the minister for foreign affairs

"V. The present decree, applicable to all prizes taken since the declaration of war, shall cease to have effect, as soon as the enemy powers shall have declared free and not seizable, although destined for ports of the republic, the articles of provisions, belonging to neutral nations, and enemy's property laden in neutral ships."

You will perceive, my friends, from this contrast, that England was the first violator of neutral rights; but, lest it should be pretended that the treaties above mentioned did not go as

far as the French decree, it may be well to inform you, that, immediately after the publication of the British order of June 8, 1793, of which you will find a minute in the above, our minister in London, Mr. T. Pinckney, had a conference with the British minister lord Grenville: he complained of the violation of our rights, and asked if Spain would pursue the same course as England, since the treaties (as above quoted) did not go so far as the order of June, 1793:.....lord Grenville replied....that "*though it was not expressly mentioned, it was fully understood by both parties* (to the above treaties) *to be within their intention, to capture all neutral vessels laden with provisions and bound to France.*"

Having thus established, from the nature of the case and official documents, that England was the earliest aggressor, and that what the advocates of England call the first act of French aggression, was an act of retaliation only; I propose to inquire *whether our own government, under the Washington administration in particular, did not consider England as the earliest and greatest aggressor?* The evidence on this point must be conclusive, since the principal authorities are the *leaders of the federal party.*

The correspondence of our minister at Paris, Mr. *Gouverneur Morris*, with the Washington administration, in 1793-4, proves that France was anxious to repeal her decree of May, 1793, in order to preserve her alliance with America; that the French government uniformly expressed the warmest wishes for our welfare; that, it at no time intimated even a wish for any aid from us but such as our neutrality permitted us to afford; and in one of his dispatches, Mr. Morris declares that the French decree of 1793, *originated in the measures of Britain.*

The correspondence of our minister in London, Mr. *Thomas Pinckney*, in 1793-4, proves, that the English considered themselves pledged by the treaties with Russia, &c. of March, 1793, to intercept all neutral trade with France; that they did not, at any time, pretend to justify their measures by the plea of *retaliation*, but, on the contrary, that *they declared their right* thus to interrupt all communication with rebellious France.

Almost the whole correspondence of our government with the English minister in this country, consisted of *complaints against his government*....whilst the correspondence with the French minister consisted of *answers to complaints against us, made by France.* Can the contrast be mistaken?

The proceedings of our citizens and of congress further shew the sense of the country:

On the 27th March, 1794, Mr. *Jonathan Dayton* laid on the table of the house of representatives of the United States, two resolutions....the first, for the sequestration of all debts due by the American citizens to British subjects, the second, for appropriating such debts to the relief of those, whose vessels had been plundered by British cruizers.

On the 7th April, 1794, Mr. *Clarke* laid a resolution on the table of the house of representatives U. S. for suspending all commercial intercourse between the United States and Great Britain.

Mr. *Sedgwick*, in answer to the resolution of Mr. Clarke, said, that he hoped negociation with England would precede war, and if that failed to secure justice, " we must seek redress by the means God and nature has given us." Mr. Sedgwick, at the same time proposed to raise an army of 25,000 men.

The president, *Washington*, in his message to congress, April, 1794, said, " the communications I have made to you in the present session, from the dispatches of our ministers in London, contain a serious aspect of our affairs with Great Britain."

In the same session, *an embargo was laid*, and in May, 1794, *the people of Boston*, in regular town meeting, besought congress *not to repeal it.*

In the debates of congress, and the resolutions of the people, Britain was constantly proclaimed to be the first aggressor: *against her alone*, hostile measures were preparing; and, against France, no complaints were heard but amongst the agents of her enemy. That the matter may be put out of doubt, read the following extracts from the dispatches of the *Washington administration* to our minister in France: a letter of June 10, 1794, says:

" There is reason to believe, that the *embargo*, when it was first laid, excited uneasy sensations in the breast of the French minister. But, you know enough of the history of this business, to declare, that, *it was levelled at Great Britain*, and was made general, *merely* because if made partial against her, it would have amounted to a cause of war; and that *the embargo was repealed because it was reputed injurious to France.*"

Can any thing be stronger than this? If France was the first aggressor, why did Washington say this? Great Britain must have been a *grievous aggressor* indeed to have received *such treatment.* But I have yet to call Mr. *Timothy Pickering* before you: in a letter to our minister in France, dated Sept. 12, 1795, Mr. Pickering said:

" The government of the United States is sincerely friendly to the French nation: the latter doubtless believes, that the great body of the people are friendly towards them....the belief is well founded, and it is equally well founded as to those who administer the government."

If France was the first aggressor, Mr. *Pickering* was but too zealous in the cause of Britain, notwithstanding those professions, not to complain, if there were cause. The truth is, *war* was proposed against England alone: *a minister* was sent to demand redress from *England* and *not from France.* All this was done by the *Washington administration*....and what does it prove?

I flatter myself, that I have thus established the point in controversy: the proofs that I have laid before you form but a portion of those which are applicable and incontrovertible. If there is any advocate of England, who imagines he can disprove a syllable of what I have said, I ask him to attempt it: the cause of that faction is interested, and therefore silence must be attributed to inability. I agree to the justice of the position, that if we should go to war with the first aggressor, it should be with Britain who was the first aggressor; and the sooner war shall be declared against her, the more safe and honorable for this country.

March 21, 1809.

LETTER XIV.

I FLATTER myself, that, in my last letter, I proved, that Britain was the first violator of neutral rights, and that, in following her pernicious example, France has constantly excused herself, upon the pleas of necessity and retaliation: these excuses I am unwilling to consider as any justification of France; but, as the advocates of England place great reliance upon them, their force cannot be abridged by the change, and if they justify England they afford equal protection to France.

This point being settled, the next inquiry that presents itself is, whether England or France has been the greatest aggressor? This is a question, which the friends of the former have very wisely shunned; they tell you, that it is immaterial what were the consequences, since every thing depends upon the priority of aggression. But should it appear, that, besides being the earliest, Britain has been infinitely the greatest aggressor, it will be a point of much importance in this discussion, and it will increase the necessity for singling out that nation for hostilities.

As it would be impracticable to state all the acts of depredation and insult, that this country has tamely suffered, for sixteen years, or to give any thing like a mercantile account between the outrages of the belligerents; I must confine myself to an epitome of all the orders, decrees, &c. under which neutral commerce has been abused and ultimately swept from the ocean. This view will shew the progress in usurpation and injury, and the relative character of each belligerent. I have endeavored to give a correct analysis of all these acts; and if that of the late orders of council is not entirely so, or as complete as it might be, it arises from the impracticability of confining in so small a space, the features of such extensive and complicated documents. Such remarks, as offer themselves on perusing this epitome, shall follow it.

BRITISH ORDERS, &c.—No. 1.

The treaty ratified in March, 1793, by England and Russia, and adopted in the same year, by Spain, Austria, and Prussia, binds the contracting parties to prevent all neutral trade with France.

No. 2—*June* 8, 1793.

Directs the seizure and condemnation of neutral vessels, laden with neutral provisions, bound for France.

If Swedish or Danish vessels are met entering a port blockaded, they are not to be seized for the first attempt: but other neutrals (there were no other neutrals but American) are to be seized for the first attempt.

A proclamation, published in a neutral country, that a port, island, or nation is declared to be blockaded, is alone sufficient to justify the condemnation of the vessels of such neutral state, bound to such places.

No. 3—*November* 6, 1793.

All vessels laden with any produce of French colonies, or carrying provisions to such colonies, to be seized.

No. 4—*January* 8, 1794.

All vessels laden with produce of French W. I. islands, and proceeding from such islands to any port in Europe, to be seized. Vessels laden with produce of said islands, and owned by Frenchmen to be seized, wherever they may be bound.

Swedish or Danish vessels attempting to enter any blockaded port in said islands, not to be seized on the first attempt; but other neutrals (Americans) to be seized the first attempt.

All vessels laden wholly or in part with military or naval stores bound for said islands, to be seized.

No. 5—*January* 25, 1798.

All vessels laden with produce of any colony of France, Spain, or Holland, and bound from any such colony, to any port in Europe, except England, or the country to which such vessels belong, to be seized. All vessels, wherever bound, laden with enemy's property, to be seized.

All vessels attempting to enter any blockaded port, in said colonies, to be seized; Danish and Swedish vessels not until after being warned, other neutrals (Americans) to be seized on the first attempt. Vessels laden wholly or in part with naval or military stores, bound to French, Spanish, or Dutch colonies, to be seized.

FRENCH DECREES, &c.

No. 1—*Decree of May* 9, 1793.

In retaliation for proceedings under treaty of March, 1793, directs the detention of neutrals, laden with enemy property or neutral provisions, the former for condemnation, the latter for purchase. To become null and void the moment England should respect the rights of neutrals.

No. 2—*May* 23, 1793.

Exempts Americans from the operation of the above decree.

No. 3—*May* 28, 1793.

Suspends the operation of decree No. 2.

No. 4—*July* 1, 1793.

Americans again exempted from the operation of decree No. 1.

No. 5—*July* 27, 1793.

Again enforces decree No. 1.

No. 6—*November* 18, 1794.

Enemy property found in neutral vessels to be seized and condemned, as long as England refuses to respect French property in neutral bottoms.

The general regulations of this decree favorable to American commerce.

No. 7—*January* 3, 1795.

As an evidence of regard for amity and treaties with America, directs an observance of neutral rights, viz.

That free ships make free goods:

That actual force is necessary to constitute blockade:

That contraband includes those articles only, that are directly used in war.

No. 8—*July* 2, 1796.

Directs French vessels to treat neutrals as they permit the English to treat them, to the injury of France.

No. 9—*March* 2, 1797.

Considering, that the treaty of 1778, guarantees to France whatever favors America might thereafter grant to other states; and considering that America, by the treaty with England of 1794, grants to that state the right to seize naval stores as contraband, when found on board American vessels, bound to France; the right to seize French property found in American bottoms; and the right to treat as pirates any Americans found in the service of France—the commanders of French ships are therefore authorised by the treaty of 1778,

To seize all enemy property and naval stores found in American vessels, the latter being destined for British ports.

To punish as pirates, Americans found

No. 6—*March* 22, 1799.

All the ports in Holland declared in a state of blockade.

No. 7—*June* 24, 1803.

Neutral vessels, that shall not have furnished on the outward voyage, articles contraband of war, are permitted to convey from enemy's colonies to their own country, the produce of such colonies.

No. 8—*August* 17, 1805.

Neutral vessels are permitted to trade until November 1, next, from enemy's colonies to England, laden with produce of such colonies, the property of neutrals.

No. 9—*May* 16, 1806.

The whole coast, from the Elbe to Ostend, declared in a state of blockade.

No. 10—*January* 7, 1807.

Neutrals forbidden to trade from one port belonging to France or its allies, to another port in their said dominions; to be warned the first, but seized upon a second attempt.

No. 11—*October* 16, 1807.

All masters of ships, pilots, mariners, shipwrights, and other sea-faring people, born in the dominions of Britain—recalled.

Commanders of ships of war and privateers, are ordered to search for, and seize, if found in neutral ships, any persons as above stated, although such persons may have become adopted citizens of the United States.

Such persons serving in neutral ships of war, to be reported to the British government.

Certificates of naturalization, granted to any person born in British dominions, declared to be null and of no effect.

No. 12—*Orders in council, &c.*

The orders in council of Nov. 11 and 25, 1807, were adopted and confirmed by acts of parliament, passed in March, April, and June, 1808. A brief view of their objects and provisions can alone be presented in a newspaper. It is to be noted, that at the period of the adoption of these orders, Americans were the only neutrals.

In the first place, Americans are forbidden, under penalty of seizure and condemnation as lawful prize, to sail to or from any port or colony of France or its allies, or any port from which the British flag is excluded. Americans, laden in whole or in part, with goods the produce of France, of any ally, or of the colony of either, to be seized and condemned as lawful in the British service, although they may have been impressed into it.

No. 10—*January* 18, 1798.

Subjects to capture all vessels, laden in whole or in part, with British merchandize, and refuses to admit into French ports, any neutral vessels that had during their voyage entered or touched at a British port.

No. 11—*March* 18, 1799.

Places America, in relation to the role d'equipage, on a footing with all other neutrals.

No. 12—*October* 29, 1799.

Declares, that, as the English and Russian navies are manned, in part, by subjects of neutral states, French cruizers are to treat such subjects as pirates, without permitting them to justify themselves on the plea of forcible detention.

No. 13—*November* 14, 1799.

Suspends the operation of decree No. 12, until neutral states shall have had time to recall their subjects, impressed and serving on board British ships.

No. 14—*December* 13, 1800.

Repeals the article, of decree No. 10, subjecting to capture, all neutral vessels laden with British merchandize.

No. 15—*December* 19, 1800.

Establishes the regulations of the ordinance of July 26, 1778—which are highly favorable to neutrals; sanctioning the principle, free ships free goods, and the other principles set forth in the armed neutrality.

This ordinance, however, provides that, in case other belligerents should not equally respect commerce, then France might retract the privileges here sanctioned, and treat neutrals as they permitted other belligerents to treat them.

No. 16—*Berlin decree, Nov.* 21, 1806.

Enumerates the instances in which England violates the laws of nations and rights of neutrals: declares, that, as the British disregard the principles of justice, and for their own ends are intent upon the ruin of all other commercial states, it is lawful to oppose them with the weapons they employ: this decree, therefore, establishes the following regulations which are to be the fundamental law of France, until England shall acknowlege on the ocean the rights of war observed on land; until she shall respect the property and persons of private individuals, and confine blockade to places actually invested.

All commerce with the British is-

prize, as well the vessel as the cargo.

Americans, desirous of selling the produce of their own country, in any port of France, of its allies, or of their colonies, must in the first instance clear out for a British port; pay light, port, and other costs; and, for permission to proceed as desired, they are required to pay a duty upon the cargo. If after paying the duty, or getting a licence, and sailing from the British port, they cannot get admission into the desired port in France—they are to return to the British port, and there they may sell the cargo, or return with it to America.

An American, arriving in a British port, with a cargo intended for a French or allied port, and finding he cannot enter the desired port, may lay up his cargo in a British warehouse for 15 months: at the expiration of that time, he must remove it, and pay all expences; or in default thereof, the cargo must be sold to pay the duties, &c. But the said cargo may, at any time within the 15 months, be taken out, and either destroyed or re-exported to America, upon payment of all the costs.

An American, laden with cotton, and arriving in England, is not permitted to export it to any French or allied port, or to return with it to America: it must be sold in England—unless in any special case the king of England may grant a licence for exportation.

Americans, desirous of obtaining for their own use, any produce of France, of its allies, or of the colony of either, must first sail for England and obtain permission to proceed to the port of destination; if permitted to take a cargo at such port, they are then to call at a British port, and pay a duty upon it, which will entitle them to proceed to America.

Americans, after having been permitted, to sell their own produce or the produce of a French colony, in the mother country, and to receive a return cargo, must call and pay a duty upon it in some British port.

Wine, brandy, sugar, snuff, and tobacco, after having been imported into England, with an intention of exporting them to some French port, in the mother country or colony, cannot be so exported unless by special licence from the king of England.

The following are the duties, that an American must pay in British ports, for permission to sell the produce of his own country, in any port or colony of France or of its allies; these are but a few of the articles taxed:

		Dolls.	Cts
Ashes,	per cwt.	2	22
Beef,	bbl.	3	33
Butter,	cwt.	4	50
Cables and Cordage,	cwt.	3	15
Corn,	bushel,	0	15
Cotton,	lb.	0	16
Fish,	cwt.	0	90
Flour,	bbl.	2	
Hemp,	cwt.	3	37
Indigo,	lb.	0	45
Iron, in bars,	ton,	13	50
Iron, pig,	do.	6	75
Pitch and Tar,	bbl.	0	95
Pork,	do.	6	80
Rice,	cwt.	0	45
Tobacco,	lb.	0	3
Turpentine,	cwt.	0	75
Wheat,	bushel	0	25

lands is prohibited, they being declared in a state of blockade.

All private persons and property, belonging to the British islands, to be seized whenever found.

All merchandize or productions of England or her colonies, to be seized whenever found.

Vessels from England or her colonies, or having touched at either to be prohibited from entering any port or colony of France.

No. 17—*Milan decree, Dec.* 17, 1808.

Considering that England compels all neutral vessels to call at her ports and pay a duty on their cargoes: that, by this regulation, such states as submit to pay this tribute, place themselves on the footing of British colonies: and that submission to this imposition encourages England to establish and consider it as a right; therefore,

All vessels, that shall have paid a tax to England, or submitted to her regulations, shall be condemned as British property.

All vessels, with whatever cargo, sailing from any port in England, in her colonies, or in countries under her control; may be seized as lawful prize.

This decree to cease to be in force against any state, that shall have firmness to assert its rights; but to be enforced against all others, as long as England continues to harass the commerce of neutrals.

No. 18—*April* 17—*Bayonne decree.*

Considering that an embargo has been laid on all American shipping in the ports of the United States; and that therefore, any vessels, found on the ocean under the American flag, must be considered as fraudulent and really covering British bottoms.

All vessels under the American flag found at sea, or entering the ports of France, after this date, are to be seized.

End of French.

In comparing these lists, of the public acts of England and France, against neutral trade, these reflections arise.

In the whole course of proceeding, *France* shews an anxiety to respect the rights of neutrals; in every act, it pleads necessity and retaliation in excuse, and in every act, it pledges itself to repeal all its decrees against neutral commerce, when England shall acknowlege the laws and rights of nations.

France, in its proceedings, shews a marked partiality for the United States: and in its early decrees, they are distinguished favorably from other neutrals.

France has repeatedly, in the course of the war, as in 1795 and 1800, repealed her decrees against neutral commerce, and adhered to the regulations of the armed neutrality of 1780. From the year 1800, when Bonaparte arrived at supreme power, to the date of the Berlin decree, 1806, the most liberal policy was observed by France: this, the English journalists themselves acknowlege, and it is established by the facility with which our own citizens obtained justice in the courts of France.

France, in short, interested in the safety of neutrals, has issued no decree, that England had not before given the example of. It could not profit by the injury of neutrals, their depression was not necessary to its policy; it has at no time been able to enforce its decrees, and, therefore, they are to be considered as protests against the usurpations of England, rather than as assaults upon the rights of neutrals.

On the other hand, look at the conduct of *England*.

In its early decrees, it asserts *as a right*, every usurpation injurious to neutrals. It does not pretend to be compelled from the example of France; all those decrees are founded upon the doctrines of 1756-7: it expresses no regret at the injustice done to neutrals, and no where promises to repeal its orders, as soon as France should repeal her's.

In her orders *England* maliciously and invidiously discriminates in favor of European neutrals, and against American neutrals.

In 1797, when negociating a peace with France, the British ministry instructed their envoy, Malmsbury,* not to consent to any stipulations in favor of rights claimed by neutrals....a fact that proves France the friend, and England the enemy of neutrals.

England has not, in a single instance, repealed or retracted from her orders against neutrals; they have followed each other, as links in the chain intended to fetter all trade but her own; they have been progressively rendered more and more grievous, until the avowal is at length made, that no commerce

* Lord Grenville wrote thus to lord Malmsbury....." It is his majesty's decided and unalterable resolution on this point, not to admit of any proposal for treating with his enemies, on the subject of the rights or claims of neutral powers." *Papers relating to negociations at Lisle.*

shall any longer be carried on but by license from the English ministry.

Britain, in short, interested in the ruin of commercial states, has not hesitated at any act, calculated to attain that end. It has at no time, by its own acknowlegement and boast, been affected by the decrees of France, yet has exercised its enormous and unnatural power to crush neutrals as if they were enemies.

These observations relate to the above official acts of the government; upon extending the inquiry, the contrast is rendered still more odious to England.

The British have constantly impressed our seamen, not only on the high seas, but in our own waters, and on our own quarantine grounds. The French never have done so.

The British have constantly asserted a right to seize our vessels, bound to ports not open in peace. The French never have done so.

The British have blockaded, by their public ships, our bays and harbors, seized vessels entering and going out, and sent them to their own ports for trial, or rather for condemnation. The French have not done so.

The British have repeatedly fired at and detained, in our own waters, our coasting vessels; and in one instance, killed an American citizen on board one of them. The French never have done so.

The British have attacked and destroyed, in our jurisdiction, and therefore under our protection, an enemy ship. The French never have done so.

The British have assailed, in our jurisdiction, the minister of France and broken open his trunks. The French never have done so.

The British attacked the United States' ship of war, Baltimore, entering the Havanna, and convoying a fleet of American merchantmen; they impressed from fifteen to twenty of the crew of the Baltimore, and seized a part of the convoy; disgracing our flag and plundering our property, at the same time. The French never committed such acts.

The British attacked, in our own waters, a public ship of war, the Chesapeake, killed and wounded a part of its crew, forcibly impressed another part, every man of whom were natives of America, and after performing this exploit, returned into the harbor of Norfolk. The French never have been guilty of such an atrocious outrage.

The British have declared, by proclamation, that our naturalization laws are of no value or effect. The French have not done so.

The British have published, in our own papers, a proclamation inviting our citizens to violate our own laws, and offered protection to such as should violate them. The French never have done so.

The British have published in official form, that American ships which should violate our laws, and enter British ports, would not be called upon for the usual papers. The French have never done so.

The British have published, in our own papers, a letter from their prime minister, as an appeal to the American people against their government. The French never have done so.....Genet, the French minister, was recalled by his own government for addressing the American people, on a personal controversy with our government.

The British have forced an illegal trade with our citizens, by means of armed ships. The French never have done so.

The British, in fine, have refused all atonement or reparation for the injuries and insults experienced by our country; and they have, instead of punishing, promoted the admirals and captains, that have been most audacious and wanton in their abuse and violation of our rights.

Such, my friends, are some of the most striking instances of British outrage; probably there are many others, in your remembrance, equally gross and unjustifiable: I have noted these to contrast the conduct of the two belligerents, and I think, it must be evident that our complaints against France bear no sort of comparison in extent or multiplicity with those against England. If, however, any advocate of the latter, is disposed to question the fact, I hope every attention will be paid to him: a thorough investigation is absolutely necessary, and the public voice will remain on that side alone, that is supported by plain and undeniable facts.

March 31, 1809.

LETTER XV.

I OMITTED to mention, in my last letter, some circumstances, that are too much in point to be entirely overlooked. The peace of Amiens, in 1802, had virtually repealed all the belligerent orders injurious to neutral rights: it is of consequence, therefore, that you should know, which of the belligerents first renewed its aggressions, and fortunately this question may be decisively answered.

From 1802 to November, 1806, *France* did not issue a single decree prejudicial to neutrals: the ordinance of 1778, heretofore noticed, was alone enforced, and it was the wish of Bonaparte, as avowed by M. Portalis, president of the tribunal of prizes, to respect the rights and interests of neutral powers. But *England* had no sooner broken the peace of Amiens, than

her orders against neutrals were *renewed*....seven different measures were taken by her ministry from 1802 to 1806, calculated to destroy all neutral trade with any part of Europe, excepting England or her allies; the last of these orders was issued in *May*, 1806, and declared the whole coast from the Elbe to Brest, 1200 miles in extent, in a state of blockade, although it was not even pretended to be practicable to enforce it, within half that extent. Bonaparte, therefore, finding that these acts of outrage produced all the consequences, that could have followed equitable measures, and that *neutrals made no efforts to maintain their rights*....abandoned the liberal policy, which characterized the preceding part of his administration, and retaliated by the Berlin decree of *November*, 1806.

At the renewal, therefore, as well as at the commencement of the war, Britain began the system of depredation, that has terminated in the present embarrassments of our country; and, as the advocates of England have themselves declared, what should justify the United States in going to war, it can no longer be questioned that Britain is the proper object for hostilities, since she has not only been the earliest, but the greatest violator of our rights.

Although the decision on this point might be taken from what I have already stated in these letters, and which, I am persuaded, defies refutation....there is another description of outrage upon our rights, which deserves your attention; it is such as no nation, but Britain, has ever perpetrated, and such as no independent power, but America, would have so long and tamely submitted to. The outrage I allude to is founded upon what is termed *the rule of* '56, which declares it unlawful for neutrals to carry on, during war, any other trade than that which they pursued during peace. To place the subject in as distinct a point of view as possible, I will state....1. The circumstances under which the rule was issued, and its objects,...2. The authority which gave it existence....3. Its consequences to neutrals....4. Its pretexts, and inconsistency with the practice of England herself.

1. Every maritime power of Europe has made it a part of its policy, to monopolize the trade of its colonies; and the policy of admitting neutrals, during war, to participate in that trade, has been as universally and steadily pursued. England, bent upon the destruction of the French marine, opened the war of 1755-6, by unexampled acts of perfidy to France, and outrage against neutrals. In the moment of peace, her fleets captured above 300 French merchantmen, the crews of which were immediately cast into loathsome prisons. Having thus crippled the only marine that could check their usurpation, the British introduced, for the first time, the rule of '56, and captured all the neutral vessels found trading to or from French

colonies.....The complaints of the neutral powers were loud but unavailing....the British fleets rode unresisted on the ocean.

2. England never has had, like other states, a *maritime code*, and she has constantly refused to acknowlege *any fixed principles*....because, uncertainty affords pretexts for usurpation. The power of deciding what are the laws of nations or the rights of belligerents, is not invested in the legislative or judicial departments of government; the ministry, or privy council, alone exercise this all important authority, and they decide upon all questions, not according to the laws of nations or the principles of universal justice, but upon expediency or according to circumstances.....It is true there are admiralty courts, and their proceedings are conducted in a manner somewhat like those of the ancient civil law proceedings; but they are bound to give judgment according to the orders of the council, however repugnant they may be to the laws of nations or of justice; and, indeed, the judge of the high court of admiralty is himself not only a member of that council and a pensioner of the government, but he participates in the proceeds of prizes condemned. Under such a corrupt system, can it be a matter of surprize, that every species of outrage and tyranny has been exercised against us, under the mockery of law.

3. It would be impossible, in this place, to enumerate all the ruinous effects of the rule of '56, upon our neutral trade, under the various modifications, which the interests of Britain dictated. I submit to you, however, a *federal picture* of this outrage, the more willingly because its source must convince you how infamously unjust this rule must be, when it is thus condemned. The memorial of the merchants of Philadelphia, presented to congress in January, 1806, and signed by Messrs. *Geo. Latimer*, *Robert Waln*, *James Yard*, *Joseph Sims*, and other equally warm federalists, contains these sentiments:....

"The doctrines of the British court are novel in themselves, unequivocally hostile to neutral rights, inconsistent with the former declarations of her ministers and decisions of her judges; and partaking rather of the shifting character of convenience, than of permanent right or established law.

"The effect, of this novel doctrine, upon neutral interests, is of the most serious and alarming character; it goes to nothing short of the *destruction of neutral commerce*, and of inflicting *a most deep and deadly wound upon the trade of the United States, in particular.*

"The time and manner, of announcing it, accord with the principle itself. At a moment when mercantile enterprize, confiding in the explanations given upon this point by the British ministry, was strained to the utmost....a *new* decision of the court of appeals is announced, and every sail is stretched to catch the unweary Americans, unsuspectingly confiding in what was the laws of nations.

"To submit to these practices, *would derogate from the national character and independence of the United States.*"

If it is possible to add to this description of the infamous conduct of Britain, the materials are to be found in the memorials from Boston, Newburyport, and New York, presented to congress along with the above....there is also a letter, from the present governor of Massachusetts, *C. Gore*, confirming every sentiment in this memorial.

4. The pretexts, that are urged by the British ministry, by the author of *War in Disguise*, and by the other advocates of this pernicious doctrine, are....that, the revenue and number of seamen of France are increased, to the injury of England, by the neutral trade to the colonies. The futility of their pretexts must be evident from this single remark....that, if a belligerent has a right to interrupt a neutral trade with the colonies, because the revenue and seamen of his enemy are thereby increased, he may interrupt all trade or intercourse with the mother country also, since the revenue and seamen are increased by any trade whatever. And, indeed, it is now evident, that England had it in contemplation to forbid all trade....the rule was first applied to the colonies, it is now extended to all trade whatever. But, besides the obvious injustice of these pretexts, they are refuted by the practice of England herself: after condemning the American for trading to a French colony, they permit their own subjects to pursue the voyage, in the same vessels and with the same cargo thus plundered from the neutral, to the very port of original destination, and issue a licence for the purpose....a fact, which if no others existed, would alone prove that the hostility is not against the revenue and seamen of France, but against the innocent trade of neutrals. Further, if it is illegal for a neutral to trade to a French colony in time of war, it must be illegal to trade to British colonies; yet what is the fact?

The navigation act of England, the 10th article in particular, interdicts all intercourse with its colonies, yet there is no instance in which neutrals have not been admitted to them, during war. On this point the following quotations, from a celebrated pamphlet, published in 1804, by Mr. S. Cock, commercial and public agent of Liverpool, must be conclusive: it is addressed to the present British minister, Geo. Canning, and is an answer to lord Sheffield's objections to opening the colonies to neutrals.

"A departure (says Mr. C.) from our navigation laws, to the extent of the acts of 1795-6, *enlarged* beyond all former experience *our means of trade*, and consequently our *revenue* and the *number of our fighting men.* Our naval force and our ability to support it, have been powerfully promoted by opening our colonies. The trade of this period (1804) very far exceeds even the most flourishing period of the peace before 1793, and the pre-eminence of our naval power is sufficiently proved by a se-

ries of splendid victories, unequalled even in the naval history of Britain. Facts brilliant and striking like these refute the assertion, that the suspension of the navigation act injures the trade or navy of England; if that act had been adhered to, we should have had much less than *half our present commerce and revenue*, to meet the arduous contest in which we are engaged. In 1792, our import was *fifty millions*, duty *five*....but, in 1801, our import was *eighty millions*, duty *eight*. In short, the *immense rise* in our *trade* and *financial resources*, whilst *our fighting seamen* are more resistless than ever, shews the wisdom of *accommodating our laws to our circumstances*.

"*Foreign carriers* are so far from injuring our *marine*, that they contribute greatly to its strength, by permitting us to spare our *seamen* from ships of *trade* for those of *war*.....In the American war, if we had not carriers, we could not have continued hostilities, a great portion of our import and export trade was carried by the Flemings....a custom diametrically opposite to the navigation act: and why did government suspend that act, but because they thereby *preserved our trade*, *acquired revenue*, and *could employ our seamen in the navy* for our national salvation.

"A departure from the navigation laws, in the present war, has enlarged beyond all example, our *trade*, *revenue*, and the *number of fighting men*.*

"Britain has *doubled her commerce*, and greatly increased her naval power, by employing *neutral flags*:

The following statements are given in proof:

Entries into all the ports of Great Britain in

	1791	1792	1800	1801
Foreign ships, - - - - - -	1,710	1,586	4,341	3,132
tonnage, - - - - - -	265,574	253,858	649,985	654,354
seamen, - - - - - -	11,931	13,685	34,108	33,327

Clearances from all the ports of Great Britain in

	1791	1792	1800	1801
Foreign ships, - - - - - -	843	771	4,292	5,057
tonnage, - - - - - -	156,548	149,095	630,170	742,847
seamen, - - - - - -	7,622	7,761	34,104	38,612

These important facts, emphatically prove, that at the moment Britain forbids neutrals to purchase, *even for their own use*,

* To understand the extent to which British trade is promoted by the employment of foreign seamen, it is sufficient to be acquainted with the fact, that at the commencement of every war the British parliament passes an act, permitting their merchantmen to be navigated by crews, consisting of one-fourth British subjects, the *remainder foreigners*. By this means the government is enabled to impress for their fleets, three-fourths of their own mercantile seamen.

the produce of French colonies, her own revenue, seamen, and trade are increased by the *carriage of British colonial produce in neutral bottoms*.....When you reflect, my friends, upon these damning truths, can you wonder, that France refuses to remain an indifferent spectator? Can you be surprised, that Bonaparte refuses to allow the neutral carriage of enemy's property, when his enemies violate all neutral rights to his injury; when they support the war by the very means that they declare it unlawful for neutrals to pursue in relation to an innocent trade to French colonies?

Such are the origin, authority, character, and effects of the famous *rule of '56*. I beseech you to read again, the Philadelphia memorial; the *perfidy* and *outrage* there complained of, were perpetrated *before Bonaparte had a single decree in force hostile to neutrals:* the *rule* has not only remained in force, but *its terrors have been increased;* the consequences predicted in the federal memorial have been realized, *neutral commerce has been destroyed*, and *a deep and deadly wound has been inflicted upon the trade of the United States.* Yet, with shame to them, let it be told, that some of the very men, who in 1806 called upon government not to submit to these practices, have since denounced the government and declared that England has done us no injury! some of the very party, which declared that to submit to the rule of 1756, would derogate from our national character and independence, have now the impudence to pretend that we should go to war with Bonaparte* to avenge the consequences of this doctrine, which was enforced by Britain before he was born, and which was renewed before France had issued a single obnoxious decree.

When you reflect, my friends, upon the enormous abuses committed upon our rights by the British, abuses that cannot be described in stronger terms than the federal memorials convey; and when you reflect, that, without repeal or redress for those abuses, the men who thus demanded them, are now crouching to the rod that smote them, violating the laws of the union, and exciting† rebellion in the land, which by their own acknowlegement has been so much abused and insulted....when, I say, you reflect upon these things, you must have more than a common share of charity to believe that the motives of such men, and such a party, are either pure or honorable; and you must have an uncommon share of apathy and indifference for the welfare of your country, if your resentment is not avowed against that nation, which has never ceased to look with enmity and jealousy upon the happiness of our people, the freedom of our country, and our prospects of a prosperous commerce. You are called to support your government, not merely under the pressure of

* See the rebellious proceedings in Massachusetts.

† See appendix....D.

foreign aggression, but against a faction, which after having complained of that aggression in the bitterest terms, have now become the panegyrists of that foreign power, and the revilers of their own government. The present condition of our people, in doubt and timidity respecting foreign relations, and from this very circumstance distracted at home, cannot be much longer continued, and it behoves you to be prepared for any events that may arise.

In the present letter, I close the consideration of the questions....on priority and extent of aggression; and, I invite any advocate of England, to shew that I am incorrect in declaring.... that the British have been the earliest and greatest violators of our rights, and that, if the plea of retaliation can excuse aggression, France alone is entitled to its support. In my next, I will endeavor to vindicate the republican party from the charge of producing or promoting our present embarrassments....by a review of the conduct of the first administrations of our country.

April 6, 1809.

LETTER XVI.

I PROPOSE, in the present letter, to enter into an inquiry, of no inconsiderable importance, and to call your attention to a number of circumstances, that seem to have, very unaccountably, escaped the recollection of the public....it is a season fit to speak truth.

What has been the conduct of our government towards France and England?

The examination of this question will prove, what it is of great consequence you should know :....1. That Britain has had every reason to be satisfied with our government, and therefore that her depredations are the more unjust. 2. That France has had serious cause to complain, and therefore, that there is some excuse for her conduct. 3. That the embarrassments, now felt by our country, originated in the unfortunate policy of the administrations which preceded that of Mr. Jefferson,

This inquiry can have no invidious object at this time, however plausible such an objection to it may have been thirteen years ago; indeed, it is absolutely necessary to a just conception of our public affairs, and especially as you are every day falsely told, that, the evils which have befallen our commercial concerns, are the effects of measures adopted by the representatives of the republican party.

That I may render the exposition as concise, and yet as distinct as possible, I divide the subject under these heads :....1.

The conduct of France to America, from 1778 to 1795, when the British treaty was adopted. 2. The conduct of England within that term. 3. Our conduct to France and England. 4. Our conduct in relation to our maritime or neutral rights.

1. For evidences, of the magnitude and generosity of the services of France in our revolution, I appeal not merely to those who remember them, but to the public declarations, speeches, and correspondence of the Washington administration. Although the latter is the weakest testimony, it proves....that the alliance of France, greatly contributed to the freedom of America; that France realized the armed neutrality of 1780; and that to the alliance of France, we owed in a great measure, whatever favorable terms were had, at the peace of 1783. Of the first point in particular, there is this evidence.....In a public dispatch to congress, gen. Washington declared, that the people and army were becoming tired of the war, and that if Cornwallis had not been captured at Yorktown, he could not have answered for the issue....now we all know, that the capture of Cornwallis could not have been made, without the aid of France. If there should be any doubt on this point, I refer to the speech of *Robert Godloe Harper*, on the petition of the daughters of the count *de Grasse*, delivered to congress when it sat in Philadelphia. It is deplorable that any necessity should exist for thus asserting what never ought to have been disputed; but as ingratitude was once the reward of France, it is a duty, to renew at this time, the remembrance of those services.

The commercial and exclusive privileges with both nations enjoyed under the treaty of 1778, were of importance to France in peace, and necessarily invaluable as soon as the war of 1793 broke out; of course her conduct was proportionably friendly and circumspect. Until July, 1793, the executive had not a single complaint to make against France, and then the complaint made, was in consequence of the retaliating decree of May, of that year. In the message to congress, of December, 1793, Washington said...." the representative and executive bodies of France, have manifested, generally, a friendly attachment to this country; have given advantages to our commerce and navigation; and have made overtures for placing those advantages upon permanent ground."

As soon as royalty was abolished, France opened *all its ports to Americans*, and placed them, *as to rights and duties*, upon a footing with *its own citizens*.

As soon as our government complained of Genet, *his conduct was disavowed*, and another minister substituted.

France, in short, allied to this country, by friendship and by treaties; *having no friends in Europe;* assailed from without by the greatest combination of powers that ever was formed; convulsed and a prey to *famine* within....had every reason to rejoice *at the idea* that it had a *friend* in America, and *every mo-*

tive to strengthen the existing ties. Genet, Fauchet, and Adet, severally proposed to form even a more favorable commercial treaty, than that of 1778.

But the friendly disposition of France was evinced in a number of other instances, too remarkable not to be mentioned. On the 4th of June, 1794, it announced the measures it had taken to obtain the release of our citzens, captive in Algiers, and to establish a peace between that regency and the United States. In September following, the Washington administration answered, that this friendly aid of France, would strengthen the ties uniting the two republics.

This transaction is the more striking, when it is contrasted with the fact, that it was by the agency of the British government the Barbary powers were engaged in hostility to us, and of consequence the cause of all our injuries and *tributes* paid since.

On the 18th November, 1794, France made compensation to the Americans detained at Bordeaux by an embargo; and repealed all existing decrees against neutral commerce, excepting that relating to enemy's property, and this property it declared it would exempt from seizure, if England would respect the principle; and

On the 3d January, 1795, even this decree, subjecting enemy property to seizure, was repealed.

In the same year, France voluntarily declared it would interfere, to obtain from Spain the free navigation of the river Mississippi, for our citizens; asked whether the Floridas would be useful to us, and intimated that we might obtain them without any equivalent.

The Washington administration instructed its minister, in May, 1794, to assure France....that, "the president felt an anxious solicitude for the success of the French revolution; that he preferred France to all other nations as a friend and ally; that he retained a grateful sense of the important services rendered by France, to America in its revolution....and, that, although neutrality was preferred in the present war, in case the United States embarked in it, it would be *on the side of France*, and against her enemies, whoever they might be. And, as suspicions may be entertained of the object of Mr. Jay's mission, you are to declare that the motives of it are to obtain compensation for our plundered property, and restitution of our forts."

Such were the friendly dispositions of France, prior to the adoption of the British treaty....and such were the *avowed* sentiments of our government: you will presently learn the return that was made for the one, and the sincerity of the other.

2. *Of the conduct of England*, it would be perhaps sufficient to say....it was the reverse of that of France: the instances, however, will be noted. Passing over the scenes of our revolutionary war, in which Americans were hunted down as if they were wild beasts....we find, that, the peace was scarcely de-

clared in 1783, when it was violated; the negroes of our planters were carried off, in express violation of treaty, and the forts within our territory were forcibly withheld from us, for seventeen years after they should have been surrendered. But the enmity of the British was not confined to those acts....they stirred up and aided the Indians to butcher our defenceless frontier settlers....*their officers* guided the savage operations, and *British soldiers*, disguised as Indians, assisted in the indiscriminate massacre of our people, of every age and sex. *These facts* are not stated at hazard: the speeches of lord *Dorchester*, the correspondence of general *Wayne*, and even *the instructions to John Jay*, emphatically establish the truth of these infamous proceedings. The correspondence of the executive with our minister to France, also proves, that *the British instigated the Spaniards* on our south-western frontier to send the Creeks and other Indians to butcher our people in that quarter. And a letter from the administration to Mr. Jay, declares...." *Although we cannot prove* that the British have been tampering with the people of Kentucky and in the neighborhood of Pittsburgh, to encourage them to revolt against the general government; it has been boasted of by them, and an expectation of such support is suspected to have been excited in the breasts of some of them."*

On the ocean, the British committed outrages of as deep a dye. Orders were *secretly* issued, under which hundreds of our vessels were captured, the cause of which was equally unknown to their owners or to government. When Mr. T. Pinckney applied to the British ministry for the release of our seamen, it is believed there were between *two* and *three thousand Americans detained*, then forced to serve in the British fleets.

I believe, I may with safety affirm, that, besides thus plundering our property and enslaving our citizens, official evidence can be produced to shew that it was Britain instigated the Algerines to follow their example. Even Mr. *Harper*, warm as he always was in his friendship for the English, instead of denying their interference with the Algerines, evidently concurs in the belief of it.....In his speech upon the British treaty, and as an argument in its favor, he said...." Britain has great power over the Algerines, so much so as to have directed the terms of the late truce between that state and Portugal: this influence is so great as in a considerable degree to direct their conduct, and it has always been regarded as one of the primary causes of the depredations the Algerines have committed upon our ships."

The complaints of our government, in consequence of these outrages, *were treated with insult:* as is evident from this passage in a letter from the Washington administration to Mr.

* An agent of the name of col. *Connelly*, was employed by the British on this occasion.

T. Pinckney, dated September, 1793...." It is with concern we are obliged to observe, that, *so marked* has been the inattention of the British court, to *every* application, that has been made to them, *on any subject*, by this government (not a single answer, we believe, having ever been given to one of them, excepting in the act of exchanging a minister) that it may become unavoidable in certain cases, when an answer of some sort is necessary, to consider their silence as an answer....*perhaps it is so intended.*"

So hostile indeed, was the conduct of England, that even Timothy Pickering was compelled to acknowlege it...." that our commerce (said he, in a letter to the French minister) has been interrupted by the armed vessels of England, and sometimes with insult, we certainly shall not attempt to deny: it was because of these aggressions, *preparations for war were made.*"

Redress having been refused, at that period, congress laid an embargo....which was avowedly to operate *on England alone:* a non-intercourse act passed the house of representatives, and was only arrested by the casting vote of the vice president; a sequestration of *British property* was strenuously advocated; and the congress seemed well disposed to assert the rights and avenge the wrongs of the country....but they were checked in the honorable purpose: and the Washington administration took the chief justice, from the bench, and sent him, who was an avowed partizan of England, as envoy extraordinary to that country. I need not recapitulate the disgraceful and the fatal effects which proceeded out of that measure; perhaps it is to that alone we owe all the misfortunes which we have suffered since.

Such, then, was the conduct of England, and, when I say that it was the reverse of that of France, the fact cannot be questioned:

France granted us commercial privileges....England plundered our trade, and impressed our citizens.

France interposed to open the Mississippi and terminate our disputes with the Spaniards....England instigated them to persevere in their hostilities against us.

France interfered to release our citizens captive in Algiers....England urged the Algerines to enslave them.

France attended to, and granted redress upon our complaints....England refused all redress, by a contemptuous silence.

In such circumstances as these, if no other existed, our government was bound by the common principles of policy and justice to treat France at least with liberality. But, with how much more liberality, ought it to have acted to that France, which in our distress had rendered us such essential services, and which now in turn asked....*not for any sacrifices, not that we should support them as they supported us*....but, *the observance of treaties and the solemn pledges of friendship*, which we gave when in distress ourselves! With shame, be it told, however, that our government, at the very moment it avowed friend-

ship for France, was plunging into measures that ultimately terminated in hostility against her; and instead of observing at least....an honest neutrality, was effectually co-operating with the European coalition against her.

As it will be useful to defer for another letter, an examination of the two remaining points; I conclude the present one, with the following description, of the condition of France, given by Mr. Giles in the debate on the British treaty: it will enable you to appreciate the honor, humanity, and gratitude of the administration, which, whilst it could not deny the ties which bound us to France, proposed to dissolve them....because the French were unfortunate in their only efforts "to assimilate their government in its form and principles to our own."

"France, in 1793, was at war, singly and alone, against the most formidable combination, recorded in the history of modern times. The war was of the most bloody and desperate character, and a series of victories threatened the subjugation of that country. On March 1, the French were defeated on the Roer; on the 13th the revolt in La Vendee broke out; on the 4th of April, Dumouriez betrayed his army: May 29th, a rebellion broke out in the department of Loire; and on the 30th, another at Lyons....on July 10th, Conde surrendered, on the 27th Mayence, on the 28th Valenciennes: at the end of July, the Spaniards possessed Bellegarde, St. Elmo, and the whole department of the eastern, and a part of the Lower Pyrennees. The Prussians and Austrians possessed Weissembourg, fort Vauban, &c. and blockaded Landau. The Piedmontese and Hanoverians had made successful inroads into France, and the royalists of La Vendee possessed four departments. The royalists of the south, possessed Lyons, Toulon, Marseilles, and the departments of Vaucluse and the Rhone. France, in short, was convulsed with intestine divisions, that extended to the very heart of her convention; labored under the most formidable external pressure, and in addition to all this, was a prey to the horrors of famine."

April 12, 1809.

LETTER XVII.

IN my last letter, I enumerated the important services, which France had generously rendered us, from 1777 to 1795.... services that entitled her to our gratitude, or at least to our friendship.

And I enumerated the grievous outrages committed by England....which ought not to have been forgiven, or at least not forgotten until they were redressed.

treated her, in the midst of her difficulties, with ingratitude and injury....and, that, instead of receiving redress from England, we have acquiesced in her maritime usurpations, and thus laid the foundation of all our subsequent dishonor and commercial misfortunes.

If we were pledged, by the services of France, to remain at least not her enemy, and by the injuries of England not to assist her against France....how much more strongly were we bound by the solemn injunctions of existing treaties, to maintain an honest neutrality.

When the war commenced, in 1793, we had no treaty with England, we were under no obligations towards her, but such as the customs of civilized states prescribe. But, with France we had treaties of the most forcible and binding character. Those treaties were ratified in 1778, under circumstances so favorable to France, that, if governed by sinister motives in becoming our ally, she could have taken advantage of them; but France did not desire to profit by our weakness, and therefore the treaties had as their basis, a perfect equality of rights and reciprocity of services. Of this generous policy we had profited during our revolution; France fulfilled her engagements, and expected that, when necessity demanded it, we should fulfil ours. From 1778 to 1793, the stipulations of the treaties were altogether in our favor, but when the war commenced in the latter year, an opportunity was at length afforded us of evincing our gratitude and of performing our solemn engagements. It will be seen, however, that instead of fulfilling our engagements, we violated every one of them, which was important to France. The nation must be acquitted for this breach of moral and political justice; it was the act of a man whose influence in that day, was as hostile to the freedom of America, as to the freedom of France; it was a stain set upon the national character, by the baleful influence of Alexander Hamilton, and the secret corruption of England. The people in a constitutional way, it is true, dismissed those who betrayed them. The stigma however remains on our history; and it ought to be looked at, in order to avoid a recurrence of such shame.

In the present letter, however desirable, it is not practicable, to state all the instances in the conduct of our administration, that shewed a partiality for England; I will chiefly notice the violations of treaties, and to render the injustice on this point the more obvious, I quote the following principles of the laws of nations....in the words of Vattel.

"The faith of treaties is sacred; he who violates them, violates the laws of nations....doubly guilty, he injures his ally, and wounds the whole human race.

"Treaties between nations are binding, although the government of either may be deposed, and another form substituted.

" One party to a treaty has no right to interpret it, at its will, to the injury of the other.

" When two nations engage in war, a third or neutral state has no right to alter the condition of one to the prejudice of the other.

" When a nation has formed engagements by treaty with one state, it is no longer at liberty to enter into engagements, with another state, inconsistent with the first.

" If a neutral enters into a treaty with one belligerent, and declines forming one with the other belligerent, it becomes partial and loses its neutral character."

One of the early acts of our government, upon the commencement of the French revolution, shewed at least an indifference respecting its issue. If governed by friendly dispositions, it would have sent, as it did when it sent Mr. Jay to London, a minister to France, if not friendly to the revolution, at least not disposed to assist the coalition against it:....but, in appointing Mr. Governeur Morris, an avowed foe to the French cause, and to every species of popular rights, the administration injured itself and insulted France. His appointment was opposed in the senate, expressly on account of the man's inveterate monarchical tenets, and his hatred of free government. The predictions respecting Mr. Morris's ministry were realized, France demanded his recal, but, when our government complied, it assured the minister that it did not disapprove his conduct!

In April, 1793, the president presented to the heads of departments a series of questions, the motives for which the questions themselves plainly discovered: amongst the most remarkable were these....whether a minister from the *republic* of France should be acknowleged? And, whether the treaties with France were obligatory? The principles of the laws of nations, quoted above, could not have been unknown to the government....I am warranted, therefore, in saying, that the mere expression of doubts on those points, evinced a disposition not to acknowlege the French republic, because it was at the time surrounded with dangers; and to refuse to fulfil our treaty engagements, because they were important to France and disagreeable to England.

In the same month a proclamation of neutrality was issued.... to say the least, it was unnecessary, and its terms but too unequivocally spoke the anxiety of our government to evade the stipulations of our treaty with France.

By the treaty of 1778, we were bound to maintain and protect the French colonies in America: France had the generosity not to ask the fulfilment of this stipulation, they voluntarily abandoned it, and with a candor that is rare in the transactions of nations; therefore we ought *at least* to have abstained from aiding in the destruction of those colonies: but our government permitted British officers to land on our shores to purchase cavalry horses, and to transport them to the West Indies, to enable the

British troops to conquer the French islands: our government also consented to surrender the right of supplying the French colonies with provisions. In both instances, the interests of France were palpably sacrificed, in violation of the spirit of our treaties with her: it was pretended, that it would be violating our neutrality to return to the French a part of the arms which they had sent us during our revolution; yet the administration did not prohibit the exportation of cavalry horses, to aid in reducing the colonies we were pledged to protect. It is necessary to recal the nation to the transactions of those days. They are painful to remember, but the pain proceeds from their being true.

By the treaty of 1778, we were bound to admit French cruizers with their prizes into our ports; and, to exclude from them, not only the prizes made by cruizers of the enemies of France, but such cruizers as had captured French property. Yet, not only were British cruizers, that had captured French ships, admitted into our ports to victual and refit, but in some instances the prizes themselves were brought in, fitted for sea, and sent to cruize against the French. From 1794, a British squadron was constantly cruizing off or within Chesapeake bay, under admiral Murray; its ships following such French vessels as departed from our ports, making prize of them, and then returning within our waters. The government was well acquainted with those violations of treaties, and of our neutrality, but it did not interfere in a single instance, until the British had accomplished all they could have desired.

By the treaty of 1778, we were bound to permit the consuls of France to take exclusive cognizance of prizes brought into our ports by French cruizers; yet, in June, 1793, in violation of this treaty, and treaties are the supreme law of the land, the courts of the United States were directed to take cognizance of those prizes, and the French consuls were thus deprived of their privileges. The consul, Duplaine, at Boston, had taken charge of a prize, *according to treaty;* he was three times indicted before the state court for it, and each time the jury refused to find a bill against him:....the administration, unable to compel him to surrender the rights of treaty, or the jury to violate the supreme law, deprived Duplaine of his consular authority!

Besides those open infractions of treaties in relation to prizes, the collectors of our ports, the judges of our courts, district attornies, and marshals, all subservient to the wishes of Mr. Alexander Hamilton, left no means unemployed to harass and perplex the consuls of France: the oaths of British subjects and seamen were received as conclusive testimony to support the vexatious detention of French cruizers and prizes....whilst every aid and countenance was covertly extended to British cruizers.

Such was the conduct pursued by the administration, prior to the adoption of the British treaty. Before I notice this instrument, it is necessary to state the duplicity of the administration respecting it. At the moment France was rendering us every justice, and when England was violating our dearest rights; at the moment our government was obliged to acknowlege the one, and congress were preparing for war to avenge the other; no man could have believed that the administration was preparing to injure France and to submit to England: suspicions, however, were excited, and they were increased by the zeal of the administration to suppress them. Our minister in France was instructed to inform the government of that country, that the mission of Mr. Jay had *but one object....to obtain redress for the injuries which England had committed.* The same declaration was made in the senate, and announced to the public.... the surprize of all honest men, therefore, was only equalled by their indignation, at finding, that Mr. Jay had not only not obtained any redress, but had sacrificed our own rights, the obligations we were under to France, and even the most valuable branch of our own export produce.

The British had issued an order, in June, 1793, for the purpose of starving France, to seize all neutral vessels bound to that country, and laden with *corn*, *flour*, or *meal*....hundreds of American vessels were captured under this order, and the Washington administration remonstrated against this measure, in the following terms, in its letter to our minister in London, of September 7th, 1793:....

The order of June, 1793, " is so manifestly *contrary to the laws of nations*, that nothing more would be necessary, than to observe that it is so."

" This act, too, tends directly to draw us from a state of peace, in which we were wishing to remain. It is an essential character of neutrality to furnish no aids (not stipulated by treaty) to one party, which we are not equally ready to furnish to the other. If we permit corn to be sent to Great Britain, we are equally bound to permit it to France. *To restrain it, would be a partiality which would lead to war* with France; and, *between restraining it ourselves and permitting her enemies to restrain it, there is no difference.* France would consider this as *a mere pretext*, of which she would not be the dupe, and on what honorable ground could we otherwise explain it. Thus we should see ourselves plunged, by this unauthorised act of Britain, into a war."

Here, then, was a stand made in 1793, against the usurpations of England: but so rapid was the progress of British influence, that the administration abandoned this honorable ground in 1795, by Mr. Jay's treaty. After having made the above declaration, the administration surrendered our right of conveying, not merely *corn*, *flour*, and *meal*, but *every description of provi-*

sions, to France. It acknowleged the right of England to seize all our vessels, laden with provisions, and thus sacrificed not only our own rights, but concurred in the project of starving our faithful ally France, and evinced a carelessness, whether its government, unwilling to be the *dupe* of our artifice, declared war against us or not.

By the treaty of 1778, France was bound to permit our vessels to trade in all property whatever, except actual contraband: this was highly favorable to England. By Jay's treaty, we surrendered the right to protect French property, to the manifest injury of France, and contrary to the laws of nations.

By the treaty of 1778, we had a right to convey to England naval stores and all other articles not directly used in war: a privilege of great importance to England. By Jay's treaty, we agreed, that to supply France with naval stores was unlawful: the injustice of this to France, you can all appreciate.

By the treaty of 1778, we guaranteed the French colonies: but by Jay's treaty, we agreed that to supply them with provisions or carry their produce to Europe was unlawful....the perfidy of this was increased by our agreeing to supply *the colonies of England.*

Under the treaty of 1778, the French sold their prizes in our ports, but as soon as Jay's treaty was ratified, the French were prohibited from selling them.

By the treaty of 1778, our citizens had a right to serve as volunteers in the armies or fleets of England: by Jay's treaty, our citizens were forbidden to serve in the fleets or armies of France.

Of the baseness and perfidy of those acts, there is no language sufficiently strong to convey a just sense; they certainly afforded full ground to the French minister Adet, for declaring, that, "under the cloak of neutrality our government presented a dagger to England, to cut the throat of a faithful ally, and participated in the tyrannic and cruel rage of England, to plunge the French people into the horrors of famine."*

* The paper, presented by Mr. Jay to the British government, was more like the supplication of a tributary, than the remonstrance of an independent and injured nation. The envoy declared that he placed his principal reliance upon his majesty's *benevolence*; and it is therefore not astonishing, that instead of redress we received an additional share of injury. That the injury was received, will be seen from the following statement of the neutral innocent property, captured and sent into England, within the five months, ending November, 1795, that is within the very first year *after* Mr. Jay had made his treaty:

	Quarters.		*Barrels.*
Wheat,	104,760	Flour,	38,222
Rye,	9,110	Meal,	630
Barley,	200	Rice,	4,063
Oats,	1,800	Do. (bags)	1,026
Indian corn,	8,573	Ship bread, (bags)	1,400
meal, (bushels)	5,866		

Nor was the expression of censure confined to the nation, we had thus injured; the British Annual Register, noticing the conduct of our administration, expressed these emphatic sentiments:....

"Though little was to have been expected from *national gratitude*, it was supposed that *national honor* would have prevented the American government from seizing the opportunity, whilst France was struggling for a political existence, to throw the United States into the arms of its most potent enemy."

It would be useless for me to comment upon those facts....your own reflections will expose the conduct of our government in all its deformity. It is sufficient to say, that, by its hypocrisy and perfidy to France, and tame subserviency to England, the administration disgraced itself and involved the country in all its subsequent embarrassments.

It violated the most solemn engagements with France, and instead of resisting the outrages of England, gave them validity by open acknowlegement.

And it violated the laws of nations, by entering into a treaty with England whilst it declined to enter into one with France: by entering into engagements hostile to those already in force: and, by interpreting our treaty with France, at its will, in order to cover the violations of it.*

Reflect upon the relative conduct of France and England towards us, and upon the condition of France when we thus treated it, and you will not be astonished that France ceased to respect our rights, or that our commerce became the prey of British rapacity. No other consequences could have been expected....we cajoled and injured the one, and submitted with disgrace to the outrages of the other.

I might here rest the question, under discussion, but there are other evidences, deserving of your notice, which prove:....

That our present commercial embarrassments originated in the weak or wicked policy of our two first administrations.

When England and Russia commenced, in 1793, their war against neutral commerce, it has been alleged and never has been denied, that Sweden and Denmark proposed to the United States, to unite with them to support, with force if necessary, the rights of the neutral flag....and that the American administration absolutely refused. Sweden and Denmark then united their own forces, and successfully resisted the violations of their rights.

On the 30th July, 1793, England and Russia notified the courts of Sweden and Denmark, that they had entered into engagements to destroy all commerce with the rebellious French, and that a force would be maintained in the Baltic to carry their intentions into execution.

* See appendix....E.

In the following month, Sweden and Denmark returned the following answers:....

"As the independence of Sweden in a great measure depends upon commerce, it is impossible that she can consent to any thing that can in the least impair it. The subsisting treaties must have in this respect their full and complete effect. It is expected, in consequence, that Russia will withdraw the orders it may have given to the commanders of its vessels respecting the commerce of Sweden."

"His majesty (the king of Denmark) could not guess the meaning of a declaration, that in no way concerns Denmark, nor of a proceeding which applies the principles and right of blockade to situations which preclude every idea of the kind. To restrict the commerce in grain, as it now subsists, is a thing quite insignificant to the cause which Russia has espoused; but, it is not so to Denmark, because it involves *a sacrifice of her rights, of her independence, and of her treaties, which she intends to maintain.* His majesty refrains from entering into a more serious examination of this subject, since Russia has thought proper to reject the only judge, whom Denmark could acknowlege....namely, the common law of nations."

Similar answers were returned to England, and thus Sweden and Denmark, although not in alliance, as we were, with France, had the courage to assert their own rights: their declarations were followed by the employment of an armed force to protect their trade, which they did with complete effect. In the early part of 1793, the British had captured a number of their vessels, but the *British government* was soon after not only compelled to compensate the injury already done, but to pledge themselves to respect the commerce of those powers in future; and, hence it is, that in the subsequent decrees of England, we find Sweden and Denmark exempted from their most oppressive provisions;....whilst the commerce of the United States alone became the object for unrestrained plunder.

Let me now contrast the conduct of America with the above.

On the 7th April, 1781, *the principles of the armed neutrality*, of the preceding year, were solemnly and unanimously adopted by congress.

In the letter of Mr. John Adams, to the states general of Holland, urging them to join France in supporting America, he stated that the United States had adopted and *never would abandon the principles of the armed neutrality.*

In all our treaties, prior to 1794-5, we incorporated those principles.

We were more affected by the decrees of England and Russia, than Sweden and Denmark together:....we were more capable of commanding respect for our rights:....we had an immense commerce to maintain;....our intercourse with France was more

advantageous than that with England:*....we had a national character to establish, and the respect of the world, acquired in our revolution, to preserve by our conduct as a nation:....we were robbed and grossly insulted by Britain, and bound to demand redress:....and we were pledged by gratitude and by treaties, to serve instead of injuring France, the faithful ally in our day of necessity and danger: yet, in contempt of all those obligations, our administration not only refused to resist, as Sweden and Denmark had done, but confirmed and acknowleged, by a treaty, the very *usurpations* that subjected our commerce to ruin and our country to disgrace. Contrary to the laws of nations, to the principles of the armed neutrality, and to our most important interests, our administration consented that the British might take our vessels, laden with provisions and naval stores, considering those articles as contraband:....it agreed that a coast or island might be blockaded by proclamation:....it agreed, that we might be lawfully prevented from carrying on during war, a trade not open to us in peace: and, by neglecting to make any provision whatever in the British treaty, for the safety of our seamen, it basely and criminally abandoned them to impressment.

Let us, then, no longer be falsely told, that with the administration of Mr. Jefferson commenced the ruin of our trade. When he came into power, he found our commerce harassed in every way that the commercial jealousy of England induced it to devise:.....he found the most sacred principles of the laws of nations, the most solemn engagements of treaties, and the most essential rights of America....betrayed and sacrificed by his predecessors. And, if he did not, in the course of his administration, place the external affairs of our country in as prosperous a condition as he left our internal concerns....it was, because the hypocrisy, tameness, and perfidy, of preceding administrations, had left him no alternative, but *to continue to submit to outrage, or to resist it at some sacrifice.*

The moment for resistance was, when our rights were first assailed in 1790; but instead of resisting, the administration acquiesced in the injuries and indignities offered us. When our seamen were within our own control, and our property but partially plundered; when the neutral states of Europe would have joined us; then it was, that resistance could have been made with honor and with effect. If we had done so, it is very true, a host of British merchants would not have made their fortunes; but the honest American would not have been subjected to ruin, or the country disgraced: at that time, some privations would have been felt, but they would have been temporary and would have been amply compensated by subsequent safety. The opportunity, however, was not taken, "the locks of these who had been Solomons in council, and Samp-

* See appendix....F.

sons in combat, were cut off by the whore England,"....and it is not to be wondered at that the commerce of the country was ruined when the government had lost the faculty of maintaining its rights.

I beseech those, therefore, whose fortunes have been ruined by maritime plunderers, to attribute their disasters to the policy pursued from 1793 to 1800, and not to involve in their anathemas Mr. Jefferson or his friends....*they* have uniformly resisted belligerent outrages, *they* have never surrendered any of our rights, *they* have not violated treaties, nor have *they* deserted or betrayed an ally in distress....and on these grounds, they are entitled to the gratitude and regard of all those who prefer domestic privations to the payment of foreign tribute.

April 10, 1809.

LETTER XVIII.

HAVING extended the discussion, of the questions, which form the subject of these letters, to a much greater length than I originally proposed; I will close it in the present letter, and endeavor to shew, from a review of what I have written:....1. That nations, as well as men, have advanced in improving their relative conditions:....2. That England alone has steadily interrupted this improvement:....3. That the result of the present war must be favorable to the rights and interests of neutral and weak nations:....4. That it is the duty of our government to promote this object:....5. That states, as well as men, are capable of securing the rights of each other, and of protecting the weak against the powerful.

1. The same motives, which induced men to associate in tribes, and to form nations, impelled them as nations to cultivate commercial intercourse. Necessary and useful as this connection became, it met with the same impediments, that ignorance opposed to the advancement of men in society: hence it was that, from the earliest employment of navigation to the 14th century, commerce was confined to a few states, and even that exposed to constant interruption; and hence the obstacles it has subsequently had to encounter.

Prior to the 6th century, controversies among men were usually determined by an appeal to physical force, and it is not therefore surprising that nations considered themselves at liberty to regulate their conduct by their power. But, as men and nations became enlightened, both began to submit to moral restraints, and to abridge their natural force or power in order to secure under laws their general welfare. Nations, however, were not sufficiently enlightened, or were too jealous of each

other, so far to imitate the example of men in society, as to adopt a regular system of laws to protect the weak and to punish aggression; they contented themselves with withdrawing from the practices of barbarians, and with acknowleging in treaties the rights and duties of states, in peace or in war. This improvement became rapid, as soon as the character of Europe was changed from military to commercial by the discovery of the mariner's compass, and as soon as printing began to disseminate information; it advanced with the increase of commerce and civilization, and at length, in 1780, acquired a fixed and imposing character from the league of the armed neutrality.

As early as the 14th century, nations agreed to abandon in land wars, practices characteristic of barbarism; they agreed, that the governments and armies of states should alone be at war, and that the people of each state might be benefited by the trade or industry of the other; they agreed that, private persons and property should be respected; and that the people of neutral states should not be interrupted in their commerce and intercourse with either belligerent. This improvement, in land wars, extended as far perhaps as it was possible; it exploded the use or supremacy of physical force, and placed nations infinitely nearer, the happy condition of men in society, than they had ever been before. But commercial avidity raised an almost insurmountable obstacle to such improvements, in maritime wars; and, it was, therefore, not until the land wars of four centuries had taught Europe the benefits that followed the departure from the practices of barbarism, that the determination was taken in 1780, to confine the rights of war on the ocean within the limits observed in wars on land. It must nevertheless be remarked, that it was not from want of will, but of power, that Great Britain did not restore war on land to the barbarism of the early ages; as the conduct pursued at Florence, Genoa, in Switzerland, the forcing of Holland and Denmark into the war; the repeated coalitions formed by her subsidies and intrigues; from the tenor and menaces of the declaration of the duke of Brunswick, on leading the combined powers into France; from the wars excited in La Vendee; and their assassin character; from the repeated declarations of her ministers, such as *Pitt*, *Windham*, and the "great father" of her political morality, *Edmund Burke*, that the war was a war *bellum ad internicionem;* a war unsparing, desolating, exterminating.

2. In these letters, I have endeavored to obtain truth and to declare it from whatever source derived; or whomsoever it concerned; and have shewn that Britain alone, of all the nations of Europe, has steadily opposed the improvements, in maritime wars, which were found so beneficial on land. Naturally holding but a secondary rank, she has maintained a place in the first rank among nations, by a course of conduct destructive to her neighbors, and at variance with the rights of all in-

dependent states. A commercial monopoly has been necessary to her supremacy, and to attain this object she has constantly kept the nations of the continent of Europe at war, and has made the existence of war the pretext for annihilating the trade of neutrals. I have enumerated many facts, to prove that, Britain regards no other restraints than those of physical force, and that because her marine has been generally predominant, she asserts a right of giving law to all commercial states: in further evidence, that such are her dispositions, I quote the following sentiments, from the work of Mr. Charles Jenkinson, (the late earl of Liverpool) intended as a defence of the rule of '56, and other violations of neutral rights:

"States enjoy all the rights men did before they entered into society: an individual in a state of nature has a right to protect his person and property, and if A. enters into a contest with B., a third person C. has no right to protect B., since he would thereby deprive A. of the right to destroy B. for his own safety."

Such was the avowal of a man, who for fifty years had greater influence in directing the maritime policy of Britain, than all of its ministers. It was made at a time, when England was unopposed on the ocean, and explains in an emphatic manner, the principles by which she has always been governed. This acknowlegement is such as no man can misconstrue; it avows that physical force is superior to moral obligations; and it declares the right of that nation, which may be able, not only to exterminate its enemies by the sword, but to cut them off from all intercourse with the rest of mankind. Nor was this iniquitous and barbarous doctrine merely avowed, it has been constantly acted upon: upon it were founded the decrees for starving France, and all the subsequent measures down to the orders in council, and it is this doctrine which is urged in the pamphlet called *War in Disguise*, and other productions of the present British ministry.

To what disastrous consequences, this doctrine, if adopted by other states, would lead, every reflecting man must be able to determine: if nations are as independent of control as men in savage life, and have a right to regulate their will by their force, with what justice can Britain complain of the progress of France? If it be right in England to issue an universal law, shutting up the ports and harbors, and forbidding trade between any one nation and another; if it be right in Britain to proclaim an intention to starve any nation, and to subject another nation who may not be concerned in their dispute to outrage and plunder, for doing an act innocent in the eyes of morals and the law of civilized states; if Britain asserts as a right and maintains it by force, the blockading of whole continents by a mere arrogation of authority; in what does this right consist, how is it founded, whence derived, what are its limits, by what means

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is it maintained? If it be law to-day, it must be also law to-morrow; if it be *right* in one nation, it must be also right in another nation in similar circumstances; and it being founded on the power to dare and the means to effect it, it must remain so long as that *power and will* are united; but whenever another power arrives at a height to contend for this right asserted by Britain, whenever any power obtains a force superior, a force adequate to destroy this right, then by the same rules that Britain now urges, it will be her duty to submit to the same fatal rigors. Apply the principle, has not France as just a right to employ its power, in subjecting the whole continent to its yoke, as Britain has to exercise an exclusive dominion on the ocean. The establishment, therefore, of such a monstrous tyranny, would replace the world in its former state of misery and barbarism; and perhaps the greatest good that could befal the British generations that are to come, would be the failure of their system, by the establishment of a new code of laws for civilized nations.

But, fortunately, it is the interest of no other power, but Britain, to adopt such principles; every nation in Europe has exerted itself to introduce in maritime wars, the same restraints, that have deprived land wars of their greatest atrocities. Henry IV. of France, Katherine of Russia, Frederic of Prussia, and Louis XVI. did honor to themselves and their countries by proposing....to abolish privateering, and in fine to permit the people, of nations at war, to pursue unmolested, the trade and intercourse that existed during the peace, and to confine hostilities to the fleets and armed ships. Britain alone resisted every overture of this kind; and when, in her treaties, she was constrained to recognize the rights of neutrals, she did not permit the recognition to regulate her future measures. Of this, her conduct, in relation to the armed neutrality, is an emphatic proof.

When every other power of Europe had joined that league, or acknowleged its principles, Britain resisted it, and only when her power failed to support her opposition, did she consent to join in acknowleging, what was termed the *modern law of nations*. She then looked forward with anxiety, to a moment, when she might not only abandon it herself, but induce other states also to violate its principles: and the circumstances of the war of 1793, afforded but too favorable an occasion for fulfilling her wishes: she renewed her opposition to the rights of neutrals, and prevailed on Russia, which had so honorably asserted them in 1780, to follow her example. Subsequent events, indeed, have shewn that she entered into the war, with no object, dearer to her heart, than the destruction of the modern laws of nations: she saw in the subjugation of France, the removal of her most powerful commercial rival; she apprehended from the safety of neutrals the overthrow of her monopoly. With these

views it was that she so eagerly promoted the coalitions of Pavia and Pilnitz:* hence it was, that when she sent the royalist officers of the French marine on an expedition to Quiberoon, she not only abandoned them on the French coast, but directed her ships to fire upon them; and when she burnt the naval arsenals of Toulon, in contempt of the most solemn engagements, she pronounced both acts of perfidy and baseness, *naval triumphs.*† Hence it was, that Nelson declared it was the pleasure of England that Spain should no longer have any trade; and to this policy alone are we to attribute the destruction of Copenhagen and the robbery of the Danish fleet....the outrages towards other European neutrals, and all the commercial misfortunes that have befallen our own country for the last sixteen years.

3. If, therefore, the improvement of nations has been interrupted; if principles, so favorable to neutral and weak states, which were recognized in 1780, have ceased to operate, it is owing to the unprincipled means that Britain has so steadily employed for their destruction, and not their abandonment by the other nations of Europe. On the contrary, the war is now waged for an object palpable in itself, and in which all states have an interest. It is not to retain Malta, that hostilities are continued, since France lately offered to surrender it; it is not to check the military career of Bonaparte on the continent, since every campaign adds to his power: the real cause is.... Britain anticipates, among the earliest effects of peace, from the genius and interests of the French government, not only a successful competition in trade and manufactures, but a proposal, to the civilized nations of the world, and an agreement among all civilized nations to form such a maritime code as would put a period to her usurpation and tyranny on the seas.

In the issue of the contest, therefore, all states, who have an interest in the freedom of navigation, are concerned. The whole maritime history of Britain shews what would be the result to weak states, if she were to succeed; but the policy and interests of France would make her triumph propitious to every neutral. In anticipating, therefore, the ultimate success of France, I am warranted in asserting that it will replace all na-

* In a speech, delivered by Mr. Pitt, in parliament, in the winter of 1792-3, he said...." It has been said, that it is a war of extermination we are about to undertake: yes, such is the war. Again, it is said, it depends on ourselves, whether we live in peace with France....prudence commands us to live with the French as enemies."

† " Shall I speak of the Quiberoon expedition, which no man, not dead to honor, can think of without shame and horror? An expedition, in which English blood was not shed, but in which British honor bled at every pore."

Mr. Sheridan's speech in parliament....October 30, 1795.

" Every thing that has passed at Toulon, is scandalous and disgraceful to our arms and the English name I would wish the world not to believe that we took that city and its marine under our protection, for the disgraceful purpose of seizing the first opportunity to destroy them."

Mr. Fox's speech....Jan. 21, 1794.

tions in that progressive state of improvement, from which they have been diverted by the interested views and machinations of Britain. Her expulsion from Spain, her affected but hollow concessions to our government, and the very pitiful manner in which these concessions are made, speak a prophetic language respecting the issue of England's hostilities: and happen when it may, one of the earliest consequences of peace will be the adoption of a system, founded upon the universal principles of justice and the rights of all nations, under which neutrals may find protection in all future wars.

4. In the circumstances, therefore, in which our government is placed, its conduct will become not only important to ourselves, but to all other states. We have had experience enough of the unsettled state of maritime rights; we have immense interests to secure; we have a character to establish, though somewhat tarnished by our conduct from 1793 to 1800; we are destined to become the first commercial nation; it becomes us, then, if we do not take the lead in establishing a code for the future guidance of states, at least to contribute to its establishment. The experiments, we have tried at some fiscal loss, prove that we possess within ourselves the means of securing full and complete justice from Britain; her offered atonement to us was the result of her necessities, not of her inclination; whilst, therefore, we accept the concession now made,* let us not lose sight of those great and important principles, which we are bound to promote for our own welfare and for the benefit of other nations; let us not abandon a single right or privilege, belonging to a sovereign nation....we shall, by this means, establish our own rights, and aid in the advancement of nations to as much perfection as they are capable of.

5. I have shewn that nations, as well as men, have steadily advanced in improvement; their rejection, in land wars, of practices characteristic of barbarism, proves that when they determine to do so, they may abolish the abuses of maritime warfare. Sir Wm. Scott, and other advocates of the conduct of England, scoff at the idea of further improvement, in the relations of states; and they term it the *new philosophy;* but their sneers, instead of making the idea absurd, only shew their dread of its realization. Society itself is secured by substituting moral instead of physical force; and if savage men could be induced to surrender themselves to control, surely nations, composed of civilized men, must be prepared, and more disposed to receive the benefits of association for mutual defence; nations stand as much in need of mutual support as men in society; is there any thing preposterous, then, in supposing that they will unite in an association, for their general benefit?

* Written after Mr. Erskine had offered atonement for the murders on the Chesapeake.

Cottages were the foundations of cities and states; so treaties have been the basis of association among nations; but when treaties were first introduced, the pirates of Europe treated them as the advocates of England now treat the idea of a confederation of nations, they were the *new philosophy* of that age; treaties, though violated in these days, in a manner beyond example, have not been exploded; and although Britain has performed her part in bringing them into disrepute, they still remain as links in the chain that unites civilized powers.

But a confederation of nations for protecting weak states, is not merely a theoretical idea, or a matter of casual suggestion; there have been confederations, and they have promoted all the objects, that laws accomplish in society. There had been repeated confederations of states, in Europe, for the regulation of continental concerns, prior to the famous league of 1780; but as the latter was formed for maritime purposes, it is the most remarkable: England ought not to have doubted the efficacy of confederations, after having been compelled by that of 1780 to abandon, with disgrace, her piratical depredations upon neutral commerce; she cannot dispute their efficacy, since she sent two expeditions, in the course of the present war, to frustrate the objects of northern confederacies. The politicians who deal in mystery, and who wish to afford a latitude for any course of conduct, call partial confederacies *balances;* and thus the *balance of power* is one of the cabalistic phrases of this class; their own measures afford the best exposition of their using a figure of speech wholly unappropriate; when the whole of Europe was raised in arms against France, it was to support the *balance of power;* now the dominion of the sea is the balance of power; but an association or confederation for giving freedom on the seas, is called despotism; but it is the despotism of just law against crimes and criminals; and it is to be desired, as it appears to be realised in our times, that all civilized states would establish a code of laws for their general and common observance.*

It is evident, therefore, that states, like men, stand in need of mutual protection; that they are more likely to form a society for supporting the weak and punishing aggression, than men were when they passed from a savage to a civilized state; that states have advanced in this important improvement, and that they have reaped the advantages anticipated. As in society,

* A new paradox, but of the same equivocal generation, has been started while this sheet is at press; which is in the following curious paragraph..... "The balance of *power*, which for three centuries prevented the destruction of any one independent state by violent means, and exhibited before the dismemberment of Poland, nineteen distinct powers of the most unequal strength, is to be ascribed, not to the moderation or to the jealousy of the four great rivals, but to what may be termed, an *equilibrium of weakness in their military constitutions.*"

there will be among nations, some disposed to create and profit by the distresses of others; but experience has shewn, that nations have the power to recall them to their duty, either by the threat of warlike punishment, as in 1780, or by out-lawing and exiling them, as is at present practised towards England: on the former occasion the experiment was successful, and in our own case we begin to experience the effects of our war upon the manufactures and revenue of the nation that has injured us.*

Whilst, therefore, governments proclaim, the miserable condition of men in savage life, and the comparative happiness of society; let them, pursuing the obvious truths, extend to nations also the blessings of association; and, if they cannot remove the inclination, let them deprive the strong of all power, to profit by the weakness of others.

April 28, 1809.

* These remarks were made, when Mr. Erskine's offers were accepted: that the hopes then entertained were not realized, is to be attributed in a great measure to the impolitic conduct of the 10th congress.

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